

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

United States Courts  
Southern District of Texas  
FILED

MAY 28 2003  
Michael N. Milby, Clerk

MARK NEWBY,

Plaintiff,

VS.

ENRON CORP., et al.,

Defendants.

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CIVIL ACTION NO. H-01-3624  
(Consolidated)

**DEFENDANT JOSEPH W. SUTTON'S ANSWER TO  
PLAINTIFFS' FIRST AMENDED CONSOLIDATED COMPLAINT  
AND AFFIRMATIVE DEFENSES**

Defendant Joseph W. Sutton ("Sutton") files the following Answer to Plaintiffs' First Amended Consolidated Complaint.

1. To the extent an answer is required, Sutton denies that this purported class action may properly be brought on behalf of the alleged class.

2. Sutton denies that he participated in, or had knowledge of, the implementation of manipulative devices, scheme(s), false and misleading statements, or other conduct alleged in the first and last sentences. With regard to the second and third sentences, Sutton admits that in its public releases, Enron, in general, was positive and optimistic about the business prospects for Enron's wholesale business, EES, and EBS, and Sutton admits that Enron maintained an investment grade credit rating. Sutton denies ever knowing of an entity referred to within Enron as WEOS. Otherwise, because the second and third sentences contain terms (such as "extolled" and "very strong") that, in this context, are too vague and/or subjective, Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in those sentences. With regard to the fourth sentence, Sutton admits that Enron's common stock reached a price as high as \$90-3/4 and

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that Enron had a market capitalization of over \$70 billion in August 2000. Otherwise, Sutton denies the allegations contained in the fourth sentence.

3. Sutton denies the allegations contained in this paragraph, except (a) Sutton does not have knowledge or information sufficient to admit or deny whatever “investors realized” (as asserted in the last sentence), and (b) Sutton admits that in the last quarter of 2001 Enron reported after-tax write-offs of \$1.01 billion and a writedown in shareholders’ equity of approximately \$1.2 billion. Sutton further admits that Enron restated its financial statements and that Enron’s stock price collapsed, that Enron’s credit rating was downgraded to below investment grade, and that Enron declared bankruptcy. Sutton has no first-hand, inside knowledge of these events, however, because he had left Enron before the relevant time period.

4. Sutton denies that he participated in or had knowledge of the “fraud” or “scheme” alleged in the first and sixth sentences. With regard to the second sentence, Sutton admits that some senior executives have left Enron. With regard to the third sentence, Sutton admits that the SEC and DOJ are conducting investigations relating to Enron. With regard to the fourth sentence, Sutton admits that Andersen has been indicted and convicted of obstruction of justice and has no knowledge of anyone at Enron destroying incriminating evidence. Sutton admits that individuals associated with Enron or Andersen have invoked their constitutional rights under the Fifth Amendment. With regard to the last sentence and the chart of Enron’s stock price, Sutton admits that the broad pattern or profile of Enron’s historical stock price was as illustrated in the chart, but Sutton does not have knowledge or information sufficient to admit or deny the accuracy of the chart.

5. Sutton admits that Enron was formed when Houston Natural Gas and InterNorth merged in 1985, but Sutton does not have knowledge or information sufficient to admit or deny the

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other allegations contained in paragraph 5, in part because some of the terms (such as “stodgy,” “burdened,” “excessive,” “performed poorly,” and “little if any sales”) are, in this context, too vague and/or subjective and because Sutton did not work for Enron during the relevant time period.

6. Sutton does not have knowledge or information sufficient to admit or deny the allegations in the first sentence regarding Kenneth Lay’s decision or state of mind in 1990 because, among other things, he was not at Enron at that time. With regard to the second sentence, Sutton admits that, speaking generally, Enron reported growth during the period 1990 to 1996, and refers to publicly available records concerning Enron’s stock price in late 1996.

7. Sutton has no information concerning transactions between Lay, Jeffrey K. Skilling, and Andrew S. Fastow and entities controlled by Enron other than employment-related transactions; therefore, Sutton denies the allegations contained in the first sentence. Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in the rest of the paragraph 7.

8. Sutton does not have knowledge or information sufficient to admit or deny the allegations in the first sentence concerning analysts’ assessments of Enron or Enron’s alleged losses and charge for the specific transactions. With regard to the allegations concerning Enron’s stock price, Sutton refers to publicly available records. Sutton does not have knowledge or information sufficient to admit or deny the allegations concerning Enron’s executives’ performance-based bonuses. With regard to the third and fourth sentences, Sutton does not have knowledge or information sufficient to admit or deny the allegations concerning anyone’s state of mind other than his own. Sutton admits that he was generally concerned with Enron’s stock price but denies that he consented to, or had knowledge of, any attempt to have Enron improperly report earnings.

9. With regard to paragraph 9, Sutton denies that he had substantive knowledge of involvement with Joint Energy Development Incorporated ("JEDI"). Sutton denies that he participated in, or had knowledge of, any restructuring of JEDI or decision regarding consolidation of JEDI into Enron financial statements. Sutton does not have knowledge or information sufficient to admit or deny the remaining allegations contained in this paragraph.

10. Sutton does not have knowledge or information sufficient to admit or deny the allegations in this paragraph.

11. Sutton does not have knowledge or information sufficient to admit or deny the allegations in this paragraph, other than that he denies participating in or having knowledge of the creation of "secretly controlled partnerships and entities," "phony profits," or improper concealment of debt.

12. Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph, in large part due to terms (such as "better-than-expected," "appeared," "enormously profitable high-growth enterprise," "very strong," and "higher-than-forecasted") that, in this context, are too vague and/or subjective. Sutton refers to publicly available records regarding Enron's stock price and reported financial results.

13. Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph because Sutton left Enron on October 31, 2000 and was not at Enron in the relevant time period.

14. With regard to the allegations in the first sentence, Sutton admits that in the 1998-2000 time frame, Enron discussed "the success of [its] wholesale and retail energy operations, its international prospects and operations, its broadband content delivery and intermediation businesses,

its strong financial condition and earnings, and its prospects for continued strong earnings growth[.]” Sutton does not have knowledge or information sufficient to admit or deny the allegations concerning Enron’s bankers. With regard to the allegations asserted in subparagraphs (a) and (b), Sutton admits that Andersen certified Enron’s financial reports in 1998 through 2000, but, without references to the specific statements that plaintiffs presumably paraphrase, it is impracticable for Sutton to undertake the investigation necessary to admit or deny whether Enron made the statements as alleged. Sutton does not have knowledge or information sufficient to admit or deny whether Enron’s lawyers and banks made or participated in those statements.

15. Sutton denies that the first sentence lists all factors determinative of the prices at which Enron’s common stock, debt, and preferred securities traded. With regard to the second and third sentences, Sutton refers to publicly available records regarding Enron’s historical stock prices. Sutton does not have knowledge or information sufficient to admit or deny the information depicted in the chart.

16. Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph, except that Sutton denies that he, “working together” with other defendants, raised billions of dollars for Enron.

17. Sutton denies that he participated in or had knowledge of any scheme or wrongful course of business such as is alleged in this paragraph; otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph.

18. Sutton denies the allegations contained in this paragraph as they relate to his activities at Enron. Sutton does not have sufficient knowledge or information concerning the terms of all transactions by Enron to admit or deny the allegations as they relate to others.

19. Sutton denies having the knowledge of any scheme such as that alleged in paragraph 19. Sutton generally admits that Enron's credit rating was important to its business. Sutton does not have knowledge or information sufficient to admit or deny the allegations regarding the subjective requirements of counter parties to the transactions or the remaining allegations contained in this paragraph.

20. Sutton denies the allegations contained in this paragraph, except that Sutton does not have sufficient knowledge or information concerning the terms of various transactions to admit or deny the allegations in the second and third sentences concerning "trigger" prices.

21. With regard to the allegations made in the first and second sentences, Sutton denies that he participated in or had knowledge of any efforts to falsify Enron's financial results. The third and fourth sentences assert matters of accounting and/or legal opinion to which no response is required.

22. Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph. Sutton denies having first-hand, inside knowledge of this event because he had left Enron before much of the relevant time period. The allegation that Chewco/JEDI was not a valid special purpose entity is an accounting/legal conclusion to which no answer is required.

23. Sutton denies that he substantively participated in creating the LJM partnerships or structuring any transactions involving those partnerships and denies engaging in any transactions involving those partnerships. Sutton admits that transactions were conducted between Enron and LJM partnerships managed by Fastow, and that those transactions, to his understanding, were reviewed and approved by other defendants, outside accountants, and legal counsel. Otherwise

Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph.

24. Sutton denies using LJM2 as alleged in the first sentence and denies having the knowledge alleged in the second sentence. Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in the third sentence of this paragraph.

25. Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph.

26. Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph.

27. Sutton denies participating in or having knowledge of the scheme alleged in the first sentence. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph.

28. With regard to paragraph 28(b), Sutton admits that Enron sold LJM2 a 75% interest in the Nowa Sarzyna power plant for \$30 million and that Enron reacquired a portion of the interest. Sutton has no first-hand, inside knowledge of much of these events, however, because he had left Enron before the relevant time period. Sutton does not have sufficient information or knowledge to admit or deny the remaining allegations in paragraph 28(b) and the allegations in paragraph 28(a), 28(c), and 28(d).

29 – 30. Sutton does not have knowledge or information sufficient to admit or deny the allegations, or accuracy of the quoted material, contained in paragraphs 29 and 30.

31. Sutton denies participating in or having knowledge of either the alleged “Enron scheme to defraud” or the “Enron Ponzi scheme.” Otherwise Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph.

32. Sutton denies that he was “accommodate[d],” as alleged in the last sentence; he admits that Enron entered into several transactions (which, to his understanding, were reviewed and approved by outside accountants and legal counsel) with the LJM partnerships; but otherwise Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph.

33. Sutton denies that he used “these contrivances and manipulative devices to inflate Enron’s reported financial results,” as alleged in the ninth sentence; but, otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph.

34. Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph.

35. Sutton denies that he participated in or had knowledge of the actions or the scheme alleged in the third sentence; otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph, most of which are alleged to have occurred after Sutton left the company.

36. Sutton admits that Enron employed mark-to-market accounting for certain assets, but he denies participating in or knowing of misuse or abuse of mark-to-market accounting or of other “accounting tricks and manipulations to falsify its financial results.” Otherwise, Sutton does not



have knowledge or information sufficient to admit or deny the allegations contained in this paragraph.

37. Sutton denies that he participated in or knew of “falsification of Enron’s financial statements,” or “accounting tricks and manipulations,” as alleged in the first and second sentences. Sutton admits that Enron discussed with investors Enron’s retail energy services business, which managed the energy needs of corporate consumers for multi-year periods. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph, in part because many of the terms are too vague and/or subjective.

38. Sutton denies that he participated in or had knowledge of the conduct alleged in the second, fourth, and fifth sentences much (if not all) of which is alleged to have occurred after he left the company. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in the paragraph.

39. Sutton admits that Enron had a broadband services business, which was presented by Enron as a growth area. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph because some of the terms are too vague and/or subjective and because he was never charged with any responsibility for this company.

40. Sutton admits that the Enron-Blockbuster joint venture was announced in July 2000 (as alleged in the first sentence), and that Blockbuster ultimately was unable to obtain the legal right to deliver certain movies (as alleged in the last sentence). With regard to the second sentence, Sutton does not have knowledge or information sufficient to admit or deny whether Enron made the statements as alleged, although Sutton denies that Enron’s press release of July 19, 2000 contained all of the statements alleged. Otherwise, Sutton does not have knowledge or information sufficient

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to admit or deny the allegations contained in this paragraph because he was never charged with responsibility for these operations.

41. Sutton admits that the Blockbuster joint venture was terminated in March 2001 although Sutton lacks knowledge and information regarding the specifics of that termination because he was not at Enron at that time. Sutton denies participating in or having knowledge of the financial reporting on the Blockbuster transaction, any “abuse and misuse” of mark-to-market accounting, or the scheme alleged in the second sentence. Sutton does not have knowledge or information sufficient to admit or deny the remaining allegations contained in this paragraph.

42. Sutton admits that Enron owned shares in The New Power Company (“TNPC”) when it was a private company and that the IPO for TNPC occurred in October 2000. With regard to the thirteenth sentence and the chart, dealing with the stock price of TNPC between October 2000 and February 2002, Sutton refers to publicly available records. Sutton denies that he participated in, or had knowledge of, any efforts “to perpetuate the Ponzi scheme” or “create a huge phony profit,” as alleged in the fourth and seventh sentences. Sutton does not have knowledge or information sufficient to admit or deny the remaining allegations contained in this paragraph because most (if not all) of the allegations concern events that occurred (if at all) after he left Enron and he was never charged with any responsibility for these operations.

43. Sutton denies that he participated in, or had knowledge of any details concerning, the “Qwest/dark fiber swap” that is the subject of the allegations made in this paragraph. Otherwise Sutton does not have knowledge or information sufficient to admit or deny those allegations because most (if not all) of the allegations concern events that occurred (if at all) after he left Enron.

44. Sutton denies that he participated in or had knowledge of the scheme, the manipulative device, “false legal opinion,” or efforts to falsify Enron’s financial condition that are alleged in this paragraph. Otherwise Sutton does not have knowledge or information sufficient to admit or deny those allegations.

45. Sutton denies that he participated in or had knowledge of the efforts to present a misleading picture of Enron’s liquidity, financial condition, and balance sheet that are alleged in this paragraph. Otherwise Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph.

46. Sutton denies that he participated in or had knowledge of the “financial chicanery,” “phony commodity and swap transactions,” or “manipulative subterfuge” that are alleged in the paragraph, and otherwise Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph because most (if not all) occurred (if at all) after he left Enron.

47. Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph.

48. Sutton admits that Enron had and needed access to capital markets; that investment grade credit rating and stock price were important to Enron and its shareholders; and that Enron raised funds through securities offerings between 1996 and 2001 (for the details of which Sutton refers to the relevant documents filed with the SEC). Sutton denies that he participated in or had knowledge of the “phony transactions,” “secret understandings and illicit financing arrangements,” or “illicit financial transactions” that are alleged in the paragraph. The dates, terms, size, and underwriters for Enron’s debt or stock offerings are matters of public record with the SEC, and

Sutton denies the information as set forth in the chart only to the extent any of it is inconsistent with the public records. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in the paragraph.

49. Sutton admits that Azurix, Enron Oil & Gas, Osprey, TNPC, Marlin, and Yosemite raised funds through securities offerings, although he lacks first-hand knowledge of many of these events. The dates, terms, size, and underwriters of those offerings are matters of public record, and Sutton denies the information as set forth in the chart only to the extent any of it is inconsistent with the public records.

50. Sutton denies that he participated in the alleged attempt to value transactions through mark-to-market accounting or otherwise improperly. Sutton admits that television monitors at Enron's headquarters in Houston displayed stock prices. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations in this paragraph.

51. Sutton denies that the allegations in the first sentence are accurate as to his activities at Enron. Sutton does not have knowledge or information sufficient to admit or deny the other allegations made in the paragraph or the accuracy of the purported quotes.

52. Sutton admits that Enron's stock price declined in late 2000 and early 2001. Sutton denies that he participated in or had knowledge of efforts or pressure to do "anything" to halt the decline in the price of Enron's stock and further denies that he had the knowledge that Enron's "top executives" are alleged to have had. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations in this paragraph because most (if not all) of the events are alleged to have occurred (if at all) after he left Enron.

53. Sutton denies participating in or having knowledge of “the scheme” or “the Enron Ponzi scheme” alleged in this paragraph. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph because most (if not all) of the events are alleged to have occurred (if at all) after he left Enron.

54. Sutton does not have knowledge or information sufficient to admit or deny the allegations in this paragraph because most (if not all) of the allegations concern events that occurred (if at all) after he left Enron.

55 – 60. Sutton does not have knowledge or information sufficient to admit or deny the allegations in these paragraphs because most (if not all) of the allegations concern events that occurred (if at all) after he left Enron.

61. Sutton admits that on October 16, 2001, Enron reported after-tax write-offs of \$1.01 billion and a writedown in shareholders’ equity of approximately \$1.2 billion, although he lacks first-hand knowledge of the event because he had left Enron by that time. Sutton admits that within the next several weeks *The Wall Street Journal* published a series of articles about Enron, the SEC announced an investigation of Enron, and Fastow resigned; and that, in November 2001, Enron filed a Form 8-K that restated Enron’s financial results for 1997 through 2000. Sutton refers to that form for precise figures and other details. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny other allegations made in this paragraph.

62. Sutton denies that he participated in the “use” of Chewco, LJM1 and LJM2 to enter into transactions as alleged in this paragraph. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations made in this paragraph.

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63. Sutton denies that he participated in or had knowledge of “prior falsification of Enron’s financial statements,” failure to eliminate “phony profits,” or efforts to cover-up fraud, as alleged in this paragraph. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations made in this paragraph.

64. Sutton denies that he participated in or had knowledge of the “scheme” alleged in this paragraph, or that he worked “hand-in-hand” with JP Morgan and CitiGroup with the state of mind alleged in the second sentence. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations in this paragraph because the allegations concern events that occurred (if at all) after he left Enron.

65. Sutton denies that he participated in or had knowledge of the “Enron scheme” or the “Enron Ponzi scheme” alleged in this paragraph. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph because the allegations concern events that occurred (if at all) after he left Enron.

66. Sutton admits that Dynegy refused to acquire Enron; Enron’s publicly-traded debt was downgraded to below investment grade; Enron declared bankruptcy on December 2, 2001; and the market price for Enron’s stock and publicly traded debt securities declined significantly. Sutton lacks first-hand knowledge of these events because he had left Enron by that time. Sutton denies that he participated in or had knowledge of efforts to conceal Enron’s true financial condition from Dynegy or “wide-ranging falsification of [Enron’s] financial statements.” Sutton does not have knowledge or information sufficient to admit or deny other allegations contained in this paragraph because the allegations concern events that occurred (if at all) after he left Enron.

67. With regard to the first through fifth sentences, Sutton admits that it is his understanding that Enron's "related party" disclosures were reviewed and approved by Enron's outside auditor and by outside legal counsel, but the allegations concerning the adequacy of those disclosures is a matter of legal opinion to which no response is required. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in those sentences. With regard to the sixth through ninth sentences, Sutton does not have knowledge or information sufficient to admit or deny the allegations concerning the rewards received by anyone involved in the LJM partnerships.

68. Sutton admits that Congress has investigated the failure of Enron and that some individuals associated with Enron or Andersen have invoked their constitutional rights under the Fifth Amendment. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph.

69. Sutton does not have knowledge or information sufficient to admit or deny the accuracy of the material quoted in this paragraph.

70. Sutton denies that he participated in or had knowledge of the fraudulent scheme, manipulative devices and contrivances, or misrepresentations alleged in this paragraph. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations in this paragraph.

70(a). This sub-paragraph is directed to Andersen. Accordingly, it does not require a response from Sutton. In general, Sutton knows and admits that Arthur Andersen LLP was the independent public accountant that audited Enron during the period 1998 through his departure from

Enron in 2000, but otherwise Sutton does not have knowledge or information sufficient to admit or deny the allegations made in this sub-paragraph.

70(b). This sub-paragraph is largely directed to the law-firm Vinson & Elkins, and to that extent does not require a response from Sutton. In general, Sutton knows and admits that Vinson & Elkins served as outside legal counsel for Enron on various matters, including SEC filings, but otherwise Sutton does not have knowledge or information sufficient to admit or deny the allegations directed to the law firm.

70(c). This sub-paragraph is directed to “Enron’s banks.” Accordingly, it does not require a response from Sutton. In general, Sutton does not have knowledge or information sufficient to admit or deny the allegations made in this sub-paragraph.

71 – 72. Sutton does not have knowledge or information sufficient to admit or deny the accuracy of the purported quotes in these paragraphs.

73. Sutton denies that he participated in or had knowledge of the “frenzy of fraud” alleged in this paragraph and that he pocketed any “illegal insider trading proceeds” or bonuses based on phony financial results or artificially inflated stock prices. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations made in this paragraph.

74. Sutton denies that he participated in or had knowledge of the alleged fraud. To the extent a response is required to the chart, Sutton incorporates by reference his responses to the various allegations in the First Amended Consolidated Complaint that are referenced in the chart.

75 – 76. Paragraphs 75 and 76 assert matters of legal opinion to which no response is required.



77. The first sentence asserts matters of legal opinion to which no response is required. Sutton admits that Enron has its principal place of business in this District and admits that acts and practices complained of herein, if they did occur, occurred in this District.

78. Paragraph 78 asserts matters of legal opinion to which no response is required. With regard to his own conduct, Sutton admits that he used the means and instrumentalities of interstate commerce in connection with some of his work as an employee and officer of Enron but denies that he did so in violation of any legal standard of conduct.

79 – 80. Sutton admits that The Regents of the University of California is the court-appointed lead plaintiff. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in these paragraphs.

81(a) – 81(q). Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in paragraphs 81(a) – 81(q).

82. Sutton admits that Enron has filed for protection under Chapter 11 of the United States Bankruptcy Code. Otherwise, this paragraph does not require a response.

83(a). Sutton admits the first two sentences regarding Lay's positions at Enron. Sutton does not have knowledge or information sufficient to admit or deny the remainder of paragraph 83(a).

83(b). Sutton admits the first two sentences regarding Skilling's positions at Enron. Sutton does not have knowledge or information sufficient to admit or deny the truth of the remainder of paragraph 83(b).

83(c). Sutton admits that Fastow was Chief Financial Officer of Enron at the time Fastow's employment ended in October 2001. Sutton does not have knowledge or information sufficient to admit or deny the remainder of paragraph 83(c).

83(d). Sutton admits the first sentence regarding Richard A. Causey's positions at Enron. Sutton does not have knowledge or information sufficient to admit or deny the remainder of paragraph 83(d).

83(e). Lead Plaintiff has deleted paragraph 83(e).

83(f). Sutton admits that Mark A. Frevert held a senior management position with Enron or one of its subsidiaries between 1997 and 2000. Sutton does not have knowledge or information sufficient to admit or deny the remainder of paragraph 83(f).

83(g). Sutton admits that Stanley C. Horton held a senior management position with Enron Transportation Services. Sutton does not have knowledge or information sufficient to admit or deny the remainder of paragraph 83(g).

83(h). Sutton admits that Kenneth D. Rice held senior management positions with Enron Capital & Trade – North America and with Enron Broadband Services at different times between 1997 and 2000. Sutton does not have knowledge or information sufficient to admit or deny the remainder of paragraph 83(h).

83(i). Sutton admits that Richard B. Buy was Chief Risk Officer of Enron in 2000 and 2001 and before that held a senior management position with Enron or Enron Capital & Trade. Sutton does not have knowledge or information sufficient to admit or deny the remainder of paragraph 83(i).

83(j). Sutton lacks knowledge regarding Lou L. Pai's involvement with Enron Accelerator and with Enron Energy Services. Sutton does not have knowledge or information sufficient to admit or deny the remainder of paragraph 83(j).

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83(k). Sutton admits that Joseph M. Hirko held a senior management position with Enron Broadband Services. Sutton does not have knowledge or information sufficient to admit or deny the remainder of paragraph 83(k).

83(l). Sutton admits that Ken L. Harrison held a senior management position with Portland General Electric and was a director of Enron. Sutton does not have knowledge or information sufficient to admit or deny the remainder of paragraph 83(l).

83(m). Sutton admits that Steven J. Kean held a senior management position with Enron. Sutton does not have knowledge or information sufficient to admit or deny the remainder of paragraph 83(m).

83(n). Sutton admits that Rebecca P. Mark–Jusbasche held senior management positions with Enron, Enron International, and Azurix. Sutton does not have knowledge or information sufficient to admit or deny the remainder of paragraph 83(n).

83(o). Lead Plaintiff has deleted paragraph 83(o).

83(p). Sutton admits that Jeffrey McMahon held senior management positions with Enron or its subsidiaries. Sutton does not have knowledge or information sufficient to admit or deny the remainder of paragraph 83(p).

83(q.1)–(q.5). Sutton admits that Cindy K. Olson held management positions with Enron. Sutton does not have knowledge or information sufficient to admit or deny the remainder of paragraphs 83(q.1)–(q.5).

83(r). Sutton admits that he was Vice–Chairman of Enron from July 1999 through October 2000. He admits that during his tenure with Enron he sold shares of Enron stock as reported to the

SEC; and that he received bonus payments for the years 1997 through 1999 (not 2000). Otherwise, Sutton denies the allegations in paragraph 83(r).

83(s). Sutton admits that Mark E. Koenig held senior management positions with Enron. Sutton does not have knowledge or information sufficient to admit or deny the remainder of paragraph 83(s).

83(t). Sutton admits that Kevin P. Hannon held senior management positions with Enron Broadband Services and Enron Capital & Trade. Sutton does not have knowledge or information sufficient to admit or deny the remainder of paragraph 83(t).

83(u). Sutton admits that Lawrence Greg Whalley was an officer of Enron Capital Wholesale Services. Sutton does not have knowledge or information sufficient to admit or deny the remainder of paragraph 83(u).

83(v) – 83(ee). Some of the sentences contained in these paragraphs do not require a response. Sutton admits that the following were for some period of time directors of Enron: Robert A. Belfer, Norman P. Blake, Jr., Ronnie C. Chan, John H. Duncan, Wendy L. Gramm, Robert K. Jaedicke, Charles A. LeMaistre, Joe H. Foy, John Mendelsohn, Jerome J. Meyer, Paulo V. Ferraz Pereira, John A. Urquhart, John Wakeham, Charles E. Walker, Herbert S. Winokur, Jr., and Frank Savage. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the remainder of paragraphs 83(v) – 83(ee).

83(ff). The first sentence does not require a response; however, Sutton notes that many of the First Amended Consolidated Complaint's sweeping allegations concerning the "Enron Defendants" do not apply to him. With regard to the second sentence, Sutton admits that during his tenure with Enron he had access to non-public information relating to the Company but denies that

he had such access simply by virtue of his position with the Company and that he had access to any and all *adverse* non-public information.

83(gg). Sutton admits that Lay, Mark-Jusbasche, and Skilling served as officers and/or directors of Azurix, a company that Enron owned in whole or in part. To the extent that any further response is required of Sutton, he denies that he has knowledge or information sufficient to admit or deny the remainder of paragraph 83(gg).

83(hh). Sutton admits that Lay, Pai, and Causey served as officers and/or directors of TNPC, a company in which Enron owned an interest. To the extent that any further response is required of Sutton, he denies that he has knowledge or information sufficient to admit or deny the remainder of paragraph 83(hh).

83(ii). Sutton admits that Ben Glison, Fastow, and Causey served as officers and/or directors or managing agents of the Atlantic Water Trust. Sutton denies that he in any way “utilized” the Marlin Water and Atlantic Water Trusts, along with Osprey and Egret, to facilitate any fraudulent scheme or fraudulent course of business. To the extent any further response is required of Sutton, he denies that he has knowledge or information sufficient to admit or deny the remainder of paragraph 83(ii).

83(jj). With respect to the first three sentences, Sutton admits that J. Clifford Baxter held senior management positions with Enron or its subsidiaries during the years 1999, 2000, and 2001; and that he died in January 2002. Sutton does not have knowledge or information sufficient to admit or deny the remainder of paragraph 83(jj).

84. The first sentence asserts matters of legal opinion to which no response is required. With regard to the remainder of the paragraph, Sutton admits that he sold shares of Enron stock

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during his tenure at Enron as reported to the SEC. Sutton denies that he engaged in illegal insider trading. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations.

85. Sutton admits that the Enron Board of Directors had an Audit Committee, a Finance Committee, and an Executive Committee and that the Audit and Finance Committees met periodically. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations in paragraph 85.

86. Sutton admits that each of the individuals was, for some period of time (although not necessarily the periods indicated), a director of Enron, and that some of them served on one or more of the indicated committees (although not necessarily during the periods indicated). Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations made in paragraph 86.

87. Sutton admits that some of the listed individuals served on one or more of the indicated committees (although not necessarily during the periods indicated). Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations made in paragraph 87.

88. Sutton admits that a “management committee” met periodically to provide business updates to Enron’s senior executives (*i.e.*, Lay and Skilling); that he served on the committee in 1997, 1998, and 1999; and that some of the individuals listed in paragraph 88 also served on management committees. Sutton denies that the management committees, including the committee described as “Enron Executive (Management) Committee – 99,” on which he served conducted the “day-to-day business of Enron” or that the committee was “aware of and approved all significant

business transactions of Enron, including each of the partnership/SPE deals.” Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations made in paragraph 88.

89. Paragraph 89 asserts matters of legal opinion to which no response is required. With regard to his own conduct, Sutton denies that he participated in all of the “business, operations, financial statements, and financial condition” of Enron that are alleged in the First Amended Consolidated Complaint and denies that he was responsible for the accuracy of all public reports and releases described in the First Amended Consolidated Complaint.

90. Sutton denies the allegations made in the first two sentences to the extent that they are directed towards him. The third sentence does not require a response.

91 – 97. Paragraphs 91 through 97 are directed to the entities and persons collectively referred to as Andersen. Accordingly, these paragraphs do not require a response from Sutton. In general, Sutton admits that Arthur Andersen LLP was the independent public accountant that audited Enron during the period 1998 through his departure in 2000. Otherwise Sutton does not have knowledge or information sufficient to admit or deny the allegations made in these paragraphs to the extent the allegations require any response from him.

98. Paragraph 98 is directed to the law firm Vinson & Elkins. Accordingly, the paragraph does not require a response from Sutton. In general, Sutton admits that Vinson & Elkins served as outside legal counsel for Enron on various matters. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations made in this paragraph to the extent that the allegations require a response from him.

99.1–108. Paragraphs 99.1 through 108 are directed to the integrated financial services institutions JP Morgan, CitiGroup, CS First Boston, CIBC, Bank America, Merrill Lynch, Barclays, Deutsche Bank, and Lehman Brothers. Accordingly, the paragraphs do not require a response from Sutton. In general, Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in paragraphs 99.1 through 108 to the extent the allegations require a response from him.

109. Sutton admits, based on the document filed with the SEC.

110. With regard to the first, second, third, fifth, sixth, and seventh sentences, the filing dates, contents, and signatories of Enron’s offering documents are a matter of public record at the SEC. Sutton denies these allegations only to the extent they are inconsistent with the public records. Based on what was known to him at the time, Sutton denies the allegations in the fourth sentence. With regard to the allegations in the eighth sentence, Sutton does not have knowledge or information sufficient to admit or deny the allegations.

111. Sutton admits the allegations contained in the first sentence, based on documents filed with the SEC. Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in the second sentence.

112. Sutton admits that the paragraph quotes excerpts from Enron’s July 14, 1998, earnings release, or paraphrases statements from that release. Sutton refers the Court to the entire release for its complete meaning and import. Sutton does not have knowledge or information sufficient to admit or deny the allegation that the 2ndQ 1998 results were “better–than–expected.” Sutton does not have first–hand knowledge of earnings releases because he was not involved with issuing earnings releases.



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113. Sutton does not have knowledge or information sufficient to admit or deny the allegations contained or the accuracy of the purported quote in this paragraph.

114. Sutton admits that the paragraph may quote excerpts from an Enron press release dated July 24, 1998; Sutton refers the Court to the entire release for its complete meaning and import. Sutton denies that he was involved with issuing press releases.

115. Sutton does not have knowledge or information sufficient to admit or deny the allegations or the accuracy of the purported quotes contained in this paragraph.

116. The date, terms, size, and underwriters for Enron's debt offering as listed in the Prospectus are matters of public record with the SEC. Sutton denies the allegations in the first sentence only to the extent they are inconsistent with the public records. Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in the second sentence.

117. Sutton admits that the paragraph may quote excerpts from an Enron press release dated September 25, 1998; Sutton refers the Court to the entire release for its complete meaning and import. Sutton denies that he was involved with issuing press releases.

118. Sutton admits that the paragraph may quote excerpts from Enron's October 13, 1998, earnings release; Sutton refers the Court to the entire release for its complete meaning and import. Sutton does not have knowledge or information sufficient to admit or deny the allegation that the 3rdQ 1998 results were "better-than-expected." Sutton was not involved with issuing earnings releases.

119. Sutton admits the allegations contained in the first sentence. Sutton does not have information or knowledge sufficient to admit or deny the remaining allegations in paragraph 119.

120. Sutton does not have knowledge or information sufficient to admit or deny the allegations or accuracy of the purported quotes contained in this paragraph.

121. Sutton denies the allegations made in the first sentence. Sutton cannot determine from the pleading precisely which statements plaintiffs contend were false and misleading; therefore, other than to deny that many of the statements contained in paragraphs 109 through 120 were false and misleading, Sutton cannot respond further to the second sentence.

121(a). Sutton denies, based on what was known to him at the time, and incorporates by reference his answers to paragraphs 418 through 611.

121(b) – 121(c). Sutton denies, based on what was known to him at the time.

121(d). Sutton does not have knowledge or information sufficient to admit or deny these allegations; however, he denies that at the time he knew about any improprieties involving Enron's accounting relating to SPEs and/or Chewco/JEDI.

121(e). Sutton does not have knowledge or information sufficient to admit or deny these allegations, except he denies that at the time he knew about any manipulation or falsification that boosted the reported profitability of Enron's wholesale business. Sutton denies ever knowing of an entity referred to within Enron as WEOS.

121(f). Sutton denies that at the time he knew about any improper deferral of capital expenditures or accumulation of deferred expenses by Enron International. Otherwise, Sutton does not have information or knowledge sufficient to admit or deny the remaining allegations in paragraph 121(f).

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121(g). Sutton does not have knowledge or information sufficient to admit or deny these allegations, except that he denies that at the time he knew about any misuse or improper manipulation of assumptions by Enron.

121(h). Sutton denies that the allegations in this paragraph are accurate from his perspective, except that he admits that Enron later wrote down the value of its water-related assets. Otherwise, Sutton does not have information or knowledge sufficient to admit or deny the allegations in paragraph 121(h)

121(i) – 121(k). Sutton denies, based on what was known to him at the time.

122. Sutton admits that the paragraph may quote excerpts from an Enron press release dated October 21, 1998, and refers the Court to the entire release for its complete meaning and import. Sutton denies that he was involved with issuing press releases.

123. Sutton does not have knowledge or information sufficient to admit or deny the allegations or accuracy of the purported quotes contained in this paragraph.

124. With regard to the first sentence, the date, terms, size, and underwriter(s) for Enron's debt offering are matters of public record with the SEC. Sutton denies the allegations only to the extent they are inconsistent with public records. With regard to the second sentence, Sutton does not have knowledge or information sufficient to admit or deny the allegations.

125. Sutton does not have knowledge or information sufficient to admit or deny the allegations or accuracy of the purported quotes contained in this paragraph.

126. With regard to the first, second, and fourth sentences, Sutton admits based on documents filed with the SEC. However, Sutton does not have knowledge or information sufficient to admit or deny the allegations concerning the authors of the Registration Statement and denies that

he participated in writing the Registration Statement in any meaningful, nontrivial way. Sutton denies that Enron's 97 and interim 98 financial results were false and misleading based on what was known to him at the time.

127. Sutton does not have knowledge or information sufficient to admit or deny the allegations or the accuracy of purported quotes contained in this paragraph.

128. Sutton admits that the paragraph may quote excerpts from Enron's January 19, 1999, earnings release and refers the Court to the entire release for its complete meaning and import. Sutton does not have knowledge or information sufficient to admit or deny that the 4thQ 1998 and 1998 results were "better-than-expected." Sutton denies that he was involved with issuing earnings releases.

129 – 133. Sutton does not have knowledge or information sufficient to admit or deny the allegations, or accuracy of the purported quoted material, contained in paragraphs 129 through 133.

134. With regard to the first sentence, Sutton admits based on documents filed with the SEC. Sutton denies that the reported financial results were false and misleading based on what was known to him at the time.

135. With regard to the first sentence, the date, participating investment banks, size, price, and proceeds of the stock offering are matters of public record at the SEC. Sutton denies the allegations only to the extent they are inconsistent with the public records. With regard to the second sentence, Sutton does not have knowledge or information sufficient to admit or deny the allegations.

136. Sutton admits that in March 1999 Enron issued its 1998 Annual Report but he does not have knowledge or information sufficient to admit or deny the allegations concerning those who

reviewed and approved it. Sutton admits that the paragraph quotes extremely selective excerpts from the 1998 Annual Report and refers the Court to the entire Annual Report for its complete meaning and import.

137 – 139. Sutton admits that paragraphs 137 through 139 quote very selective excerpts from the 1998 Annual Report and refers the Court to the entire Annual Report for its complete meaning and import.

140. Sutton admits, with the qualification that the alleged earnings-per-share figure appears to have been adjusted to take into account a subsequent stock split.

141. With regard to the first and third sentences, Sutton admits based on documents filed with the SEC. Sutton does not have knowledge or information sufficient to admit or deny that Vinson & Elkins reviewed and collaborated in writing the Form 10-K report except that he admits that he understood that the report was reviewed and approved by attorneys for Enron.

142 – 143. Sutton does not have knowledge or information sufficient to admit or deny the allegations, or accuracy of the purported quoted material, contained in paragraphs 142 through 143.

144. Sutton admits that the paragraph quotes excerpts from Enron's April 13, 1999, earnings release and refers the Court to the entire release for its complete meaning and import. Sutton does not have knowledge or information sufficient to admit or deny that the 1stQ 1999 results were "better-than-expected." Sutton was not involved with issuing earnings releases.

145. Sutton admits the allegations made in the first sentence. Sutton does not have information or knowledge sufficient to admit or deny the remaining allegations in paragraph 145.

146 – 150. Sutton does not have knowledge or information sufficient to admit or deny the allegations, or accuracy of the purported quoted material, contained in paragraphs 146 through 150.

151. The date, terms, size, and underwriters for Enron's debt offering as listed in the Prospectus are matters of public record with the SEC. Sutton denies the allegations in the first sentence only to the extent they are inconsistent with the public records. Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in the second sentence.

152 – 154. Sutton does not have knowledge or information sufficient to admit or deny the allegations, or accuracy of the purported quoted material, contained in paragraphs 152 through 154.

155. Sutton cannot determine precisely which statements plaintiffs contend were false and misleading; therefore, other than to deny that many of the statements contained in paragraphs 122 through 154 were false and misleading, Sutton cannot respond further to paragraph 155.

155(a). Sutton denies, based on what was known to him at the time and also incorporates by reference his answers to paragraphs 418 611.

155(b) – 156(c). Sutton denies based on what was known to him at the time.

155(d). Sutton does not have knowledge or information sufficient to admit or deny these allegations.

155(e). Sutton does not have knowledge or information sufficient to admit or deny these allegations except that he denies that at the time he knew about any manipulation or falsification that

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boosted the reported profitability of Enron's wholesale business. Sutton denies ever knowing of an entity referred to within Enron as WEOS.

155(f). Sutton does not have knowledge or information sufficient to admit or deny these allegations except that he denies that at the time he knew about any misuse and abuse of mark-to-market accounting, or any improperly inflated contract valuations or improperly boosted financial results.

155(g). Sutton does not have knowledge or information sufficient to admit or deny these allegations except that he denies that at the time he knew about any misuse or improper manipulation of assumptions by Enron.

155(h). Sutton denies the allegations in paragraph 155(h).

155(i). Sutton denies the allegations in paragraph 155(i).

155(j). Sutton denies that at the time he knew about "snowballing" or other falsification of Enron's financial condition as alleged.

155(k). Sutton denies that at the time he had knowledge of any improper deferral of capital expenditures by Enron International. Otherwise, Sutton does not have information or knowledge sufficient to admit or deny the remaining allegations.

155(l). With regard to the first sentence, Sutton does not have knowledge or information sufficient to admit or deny these allegations because some of the terms are, in this context, too vague and/or subjective, and because plaintiffs provide no details about any specific representations concerning Enron's management team or its hedging and management of financial risk. With regard to the second, third, and fourth sentences, Sutton does not have knowledge or information sufficient

to admit or deny these allegations. However, Sutton denies that he knew what is alleged, including that he knew that Enron did not deserve its investment-grade credit rating as alleged.

155(m). Sutton denies based on what was known to him at the time.

155(n). Sutton denies that the allegations in this paragraph are accurate from his perspective except that Sutton admits that Enron later wrote down the value of its water-related assets.

155(o) – 155(p). Sutton denies based on what was known to him at the time.

156. Sutton admits that the paragraph quotes excerpts from Enron's July 13, 1999, earnings release and refers the Court to the entire release for its complete meaning and import. Sutton does not have knowledge or information sufficient to admit or deny that the 2ndQ 1999 results were "better-than-expected." Sutton was not involved with issuing earnings releases.

157. Sutton admits the allegations in the first sentence. With regard to the second sentence, Sutton does not have knowledge or information sufficient to admit or deny. Sutton denies the allegations in the third sentence.

158 – 163. Sutton does not have knowledge or information sufficient to admit or deny the allegations, or accuracy of the purported quoted material, contained in paragraphs 158 through 163.

164. With regard to the first and third sentences, Sutton admits based on documents filed with the SEC. Sutton denies that the financial results were false based on what was known to him at the time.

165. With regard to the first and second sentences, the date, terms, size, and underwriters for Enron's debt offering as listed in the Prospectus are matters of public record with the SEC.



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Sutton denies these allegations only to the extent they are inconsistent with the public records. Sutton denies that the financial results were false based on what was known to him at the time.

166 – 176. Sutton does not have knowledge or information sufficient to admit or deny the allegations, or accuracy of the purported quoted material, contained in paragraphs 166 through 176.

177. Sutton admits that the paragraph may quote excerpts from Enron's October 12, 1999, earnings release and refers the Court to the entire release for its complete meaning and import. Sutton does not have knowledge or information sufficient to admit or deny that the 3<sup>rd</sup>Q 1999 results were "better-than-expected." Sutton denies that he was involved with issuing the earnings releases.

178. Sutton does not have knowledge or information sufficient to admit or deny the allegations, or accuracy of the purported quoted material, contained in this paragraph.

179. Sutton admits the allegations contained in the first sentence. Sutton does not have knowledge or information sufficient to admit or deny the remaining allegations.

180 – 187. Sutton does not have knowledge or information sufficient to admit or deny the allegations, or accuracy of the purported quoted material, contained in paragraphs 180 through 187.

188. Sutton admits that Enron's stock price increased (in general) in 1999 and that the stock traded as high as \$43 per share in November 1999; however, for the details of Enron's historic stock prices, he refers to publicly available records. Sutton denies that the reasons for the increase in Enron's stock price were as alleged in this paragraph and that the increase constituted "artificial inflation." Sutton does not have knowledge or information sufficient to admit or deny the allegations

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in the last sentence concerning the totality of insider stock trades. Sutton denies that he pocketed any illegal insider trading proceeds.

189. With regard to the first and third sentences, Sutton does not have knowledge or information sufficient to admit or deny these allegations except that he denies that Enron's bankers issued a series of extremely positive reports on Enron at his behest. Sutton admits that Enron's stock traded as low as \$34-7/8 on 11/23/99 but denies the allegations as to the cause or factors determinative of that price.

190 – 191. Sutton does not have knowledge or information sufficient to admit or deny the allegations, or accuracy of the purported quoted material, contained in paragraphs 190 through 191.

192. Sutton admits that the paragraph quotes excerpts from Enron's December 2, 1999, press release and refers the Court to the entire release for its complete meaning and import. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations in this paragraph because he was not involved with issuing press releases.

193 – 195. Sutton does not have knowledge or information sufficient to admit or deny the allegations, or accuracy of the purported quoted material, contained in paragraphs 193 through 195.

196. Sutton admits that the paragraph may quote excerpts from Enron's January 18, 2000, earnings release and refers the Court to the entire release for its complete meaning and import. Sutton does not have knowledge or information sufficient to admit or deny that the 4<sup>th</sup>Q 1999 and full year 1999 results were "better-than-expected." Sutton denies that he was involved with issuing earnings releases.

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197. Sutton admits the allegations in the first sentence. Sutton does not have knowledge or information sufficient to admit or deny the remaining allegations contained in paragraph 197.

198 – 211. Sutton does not have knowledge or information sufficient to admit or deny the allegations, or accuracy of the purported quoted material, contained in paragraphs 198 through 211.

212. Sutton admits the allegations contained in the first sentence. Sutton does not have knowledge or information sufficient to admit or deny the remaining allegations in paragraph 212.

213. Sutton does not have knowledge or information sufficient to admit or deny the allegations, or accuracy of the purported quoted material, contained in this paragraph.

214. Sutton cannot determine precisely which statements plaintiffs contend were false and misleading; therefore, other than to deny that many of the statements contained in paragraphs 156 through 213 were false and misleading, Sutton cannot respond further to this paragraph.

214(a). Sutton denies, based on what was known to him at the time, and incorporates by reference his answers to paragraphs 418 through 611.

214(b) – 214(c). Sutton denies based on what was known to him at the time.

214(d). Sutton does not have knowledge or information sufficient to admit or deny these allegations

214(e). Sutton does not have knowledge or information sufficient to admit or deny these allegations except that he denies that at the time he knew about any manipulation or falsification that boosted the reported profitability of Enron's wholesale business. Sutton denies ever knowing of an entity referred to within Enron as WEOS.

214(f). Sutton does not have knowledge or information sufficient to admit or deny these allegations, except he denies that at the time he knew about any misuse and abuse of mark-to-mark accounting, or any improperly inflated contract valuations or improperly boosted financial results.

214(g). Sutton does not have knowledge or information sufficient to admit or deny these allegations except that he denies that at the time he knew about any use of unrealistic projections and mark-to-market accounting to mislead investors, as alleged.

214(h). Sutton does not have knowledge or information sufficient to admit or deny these allegations except that he denies that at the time he knew any problems in developing the broadband business were as serious, persistent, or significant as plaintiffs allege, such that they could not be overcome, or that the prospects for success of EBS were “grossly overstated.” Otherwise, Sutton does not have information or knowledge to admit or deny the allegations in this paragraph because, among other things, he was not connected with this part of Enron’s business.

214(i). Sutton denies ever having knowledge of an entity called Modulus, that a portion of Enron’s presentation to analysts in January 2000 related to EBS, that he knew at the time that EIN “was doomed to failure due to numerous intractable problems” or that the January 2000 presentation about EBS “was a study in how to lie with Power Point slides.” Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations made in this paragraph because, among other things, he had no connection with this part of the Enron business.

214 (j). Sutton does not have knowledge or information sufficient to admit or deny the allegations made in this paragraph because, among other things, he had no connection with this part of the Enron business.

214(k). Sutton does not have knowledge or information sufficient to admit or deny these allegations based on information that was known to him at the time.

214(l). Sutton does not have knowledge or information sufficient to admit or deny these allegations based on information known to him at the time.

214(m). Sutton denies that he knew at the time that the Dabhol power plant was a “financial disaster,” that it would never generate profits for Enron or benefitted its business or financial condition, or that the power plant would result in a huge loss for Enron.

214(n). With regard to the first sentence, Sutton does not have knowledge or information sufficient to admit or deny the allegations because plaintiffs provide no details about any specific representations concerning Enron’s hedging and management of financial risk. With regard to the second, third, and fourth sentences, Sutton does not have knowledge or information sufficient to admit or deny these allegations except that he denies that he knew what is alleged, including that he knew that Enron did not deserve its investment-grade credit rating.

214(o). Sutton does not have knowledge or information sufficient to admit or deny these allegations, except he denies that at the time he knew about “snowballing” or other falsification of Enron’s financial condition, as alleged.

214(p) – 214(r). Sutton denies, based on what was known to him at the time.

215. Sutton admits that in March 2000 Enron issued its 1999 Annual Report but does not have knowledge or information sufficient to admit or deny the allegations concerning those who reviewed and approved it. Sutton admits that the paragraph quotes very selective excerpts from the letter to shareholders in the 1999 Annual Report and refers the Court to the entire Annual Report for its complete meaning and import.

216 – 218. Sutton admits that these paragraphs quote very selective excerpts from the 1999 Annual Report and refers the Court to the entire Annual Report for its complete meaning and import.

219. Sutton admits that Enron's 1999 Annual Report contained Enron's 1999 financial statements, as certified by Andersen. Sutton also admits that the financial data presented in the charts is contained in the 1999 Annual Report although it was presented in a somewhat different form and with additional detail and qualifications.

220. Sutton admits that paragraph 220 quotes an excerpt from note 16 to Enron's 1999 financial statement.

221. With regard to the first and third sentences, Sutton admits based on documents filed with the SEC. Sutton admits that Vinson & Elkins rendered legal services in connection with the Form 10-K report, but does not have knowledge or information sufficient to admit or deny that Vinson & Elkins reviewed and helped write the entire Form 10-K report.

222. With regard to the first sentence, Sutton admits that Enron hosted an analyst conference in Houston on January 20, 2000, and that the price of Enron stock reached \$73 per share in late January 2000 and \$78 per share in March 2000. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations in the first sentence. With regard to the second and third sentences, Sutton denies that the reasons for the increase in Enron's stock price were as alleged and that the increase constituted "artificial inflation." Sutton does not have knowledge or information sufficient to admit or deny the allegations concerning stock sales by "Enron insiders," except that Sutton denies that he pocketed any illegal insider trading proceeds.

223. Sutton admits that the paragraph quotes excerpts from Enron's April 12, 2000, earnings release and refers the Court to the entire release for its complete meaning and import. Sutton does not have knowledge or information sufficient to admit or deny that the 1stQ 2000 results were "better-than-expected." Sutton was not involved with issuing earnings releases.

224. Sutton admits the allegations contained in the first sentence. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations in this paragraph.

225 – 234. Sutton does not have knowledge or information sufficient to admit or deny the allegations, or accuracy of the purported quoted material, contained in paragraphs 225 through 234.

235. Sutton admits that Enron's stock traded at \$78-7/8 on 5/17/00. For further details concerning Enron's stock price in April and May 2000, Sutton refers to publicly available records. Sutton denies that the reasons for any increases in the price of Enron's stock were as alleged in this paragraph and that any increase constituted "artificial inflation." Sutton does not have knowledge or information sufficient to admit or deny the allegations in the last sentence concerning insider stock trades, except that he denies that he pocketed any illegal insider trading proceeds.

236. The date, terms, size, and underwriters for Enron's debt offerings as listed on the Prospectus are matters of public record with the SEC; Sutton denies the allegations in the first, second, and third sentences only to the extent they are inconsistent with the public records. Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in the last sentence.

237. Sutton does not have knowledge or information sufficient to admit or deny the allegations, or accuracy of the purported quoted material, contained in this paragraph.

238. The date, terms, size, and underwriter(s) for Enron's debt offering are matters of public record with the SEC; Sutton denies the allegations in this paragraph only to the extent they are inconsistent with the public records.

239. Sutton does not have knowledge or information sufficient to admit or deny the allegations, or accuracy of purported quoted material, contained in this paragraph.

240. Sutton admits that the paragraph quotes excerpts from Enron's July 19, 2000, press release and refers the Court to the entire release for its complete meaning and import. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations in this paragraph because he was not involved with issuing press releases.

241 – 245. Sutton does not have knowledge or information sufficient to admit or deny the allegations, or accuracy of the purported quoted material, contained in paragraphs 241 through 245.

246. Sutton admits that the paragraph quotes excerpts from Enron's July 24, 2000, earnings release and refers the Court to the entire release for its complete meaning and import. Sutton does not have knowledge or information sufficient to admit or deny that the 2<sup>nd</sup>Q 2000 results were "better-than-expected." Sutton was not involved with issuing earnings releases.

247. Sutton admits that on July 24, 2000 Enron held an earnings release conference call and that analyst meetings were scheduled for July 25, 2000, in New York and July 26, 2000, in Boston. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations in this paragraph.



248 – 260. Sutton does not have knowledge or information sufficient to admit or deny the allegations, or accuracy of the purported quoted material, contained in paragraphs 248 through 260.

261. With regard to the first sentence, Sutton admits that an all-time high price for Enron's stock of \$90-3/4 per share was registered on August 23, 2000, five weeks after Enron announced its VOD venture with Blockbuster and one month after Enron reported its 2<sup>nd</sup>Q 2000 earnings. Sutton denies that he pocketed any illegal insider trading proceedings. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the remaining allegations.

262. Sutton admits that the paragraph quotes excerpts from Enron's October 17, 2000, earnings release and refers the Court to the entire release for its complete meaning and import. Sutton does not have knowledge or information sufficient to admit or deny that the 3<sup>rd</sup>Q 2000 results were "better-than-expected." Sutton was not involved with issuing earnings releases.

263. Sutton admits the allegations contained in the first sentence. Otherwise, Sutton does not have information or knowledge sufficient to admit or deny the allegations in paragraph 263.

264 – 270. Sutton does not have knowledge or information sufficient to admit or deny the allegations, or accuracy of the purported quoted material, contained in paragraphs 264 through 270.

271. For precise prices of Enron's stock at any time in November 2000, Sutton refers to publicly available records. Sutton denies that Enron's stock price was "the result of defendants' false and misleading statements." Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph except he denies that he had knowledge of, or participated in, feverish, behind-the-scene efforts with Andersen, Vinson &

Elkins, and certain of Enron's banks to improperly avoid the recognition of hundreds of millions of dollars of losses. Sutton denies "the Enron Ponzi scheme."

272. Sutton admits that the paragraph may quote a portion of an Enron press release dated November 24, 2000, and refers the Court to the entire release for its meaning and import. Sutton lacks firsthand knowledge of this event because it occurred after he left the company.

273 – 274. Sutton does not have knowledge or information sufficient to admit or deny the allegations, or accuracy of purported quoted material, contained in paragraphs 273 and 274.

275. Sutton admits that on December 13, 2000, Enron issued a press release announcing that Skilling would succeed Lay as CEO of Enron. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the remaining allegations in this paragraph because, among other things, he was not at Enron during the relevant time period.

276. Sutton admits that the paragraph quotes excerpts from an Enron press release dated December 18, 2000, and refers the Court to the entire release for its complete meaning and import. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the remaining allegations in this paragraph because, among other things, he was not at Enron during much of the relevant time period.

277. Sutton denies that he knew about "prior falsification of Enron's financial results" or the "disastrous results for all concerned" alleged in the second sentence. Sutton admits that the stock price of TNPC declined from its IPO price and refers to publicly available records for the precise historical prices of TNPC stock. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph.

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278. Sutton does not have knowledge or information sufficient to admit or deny the allegations in this paragraph except that he denies that he participated in or had knowledge of any improper restructuring of the capitalization of several SPEs at year-end 2000, or the “Enron Ponzi scheme.”

279. Sutton does not have knowledge or information sufficient to admit or deny the allegations, or the accuracy of the purported quoted material, contained in this paragraph.

280. Sutton admits that Enron’s stock traded as high as \$84-1/16 on January 2, 2001, and as low as \$66-1/16 on January 17, 2001. Sutton denies that Enron’s stock price throughout this period was caused or determined by the factors alleged by plaintiffs and that he participated in or knew about any efforts to misrepresent Enron’s 2000 results to boost its stock price. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph because most, if not all, the allegations concern events that occurred, if at all, after he left Enron.

281. Sutton admits that the paragraph quotes excerpts from Enron’s January 22, 2001 earnings release and refers the Court to the entire release for its complete meaning and import. Sutton does not have knowledge or information sufficient to admit or deny that the 4<sup>th</sup>Q 2000 and full year 2000 results were “better-than-expected.” Sutton denies that he was involved in issuing Enron’s earnings releases. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the remaining allegations in this paragraph because, among other things, he was not at Enron during much of the relevant time period.

282. Sutton does not have knowledge or information sufficient to admit or deny the allegations because they concern events that occurred, if at all, after he left Enron.

283 – 287. Sutton does not have knowledge or information sufficient to admit or deny the allegations, or accuracy of purported quoted material, contained in paragraphs 283 through 287.

288. Sutton admits that Enron's stock traded as low as \$66-1/16 on January 17, 2001, and as high as \$83-3/32 on February 5, 2001. Sutton denies that Enron's stock price throughout this period was caused or determined by the factors alleged by plaintiffs. Otherwise, Sutton does not have information or knowledge sufficient to admit or deny the remaining allegations because that concern events that occurred, if at all, after he left Enron.

289 – 290. Sutton does not have knowledge or information sufficient to admit or deny the allegations, or accuracy of the purported quoted material, contained in paragraphs 289 and 290.

291. Sutton admits that the paragraph may quote one sentence from an Enron press release dated February 26, 2001, and refers the Court to the entire release for its complete meaning and import. Otherwise, Sutton does not have information or knowledge sufficient to admit or deny the remaining allegations because that concern events that occurred, if at all, after he left Enron.

292. Sutton admits the allegations contained in the first and third sentences based on documents filed with the SEC. Otherwise, Sutton does not have information or knowledge sufficient to admit or deny the allegations because they concern events that occurred, if at all, after he left Enron.

293. Sutton admits that in March 2001 Enron issued its 2000 Annual Report. Sutton admits that the paragraph quotes very selective excerpts from the letter to shareholders in the 2000 Annual Report and refers the Court to the entire Annual Report for its complete meaning and import. Otherwise, Sutton does not have information or knowledge sufficient to admit or deny the remaining

allegations because they concern events that occurred, if at all, after he left Enron and he had no involvement in preparation of the report.

294. Sutton admits that the paragraph quotes very selective excerpts from the 2000 Annual Report and refers the Court to the entire Annual Report for its complete meaning and import. Otherwise, Sutton does not have information or knowledge sufficient to admit or deny the remaining allegations because that concern events that occurred, if at all, after he left Enron and he had no involvement in preparation of that report.

295. Sutton admits that Enron's 2000 Annual Report contained Enron's 2000 financial statements, as audited and certified by Andersen. Sutton also admits that the financial data presented in the chart is contained in the 2000 Annual Report, although the financial data was presented in somewhat different form and with additional detail and qualifications. Otherwise, Sutton does not have information or knowledge sufficient to admit or deny the remaining allegations because that concern events that occurred, if at all, after he left Enron and he had no involvement in the preparation of that report.

296. With the exception of the number "Total current assets" for 2000, which appears to be a typographical error, Sutton admits that the financial data set forth in this paragraph is contained in the 2000 Annual Report and financial statements, although the financial data was presented in somewhat different form and with additional detail and qualifications. Otherwise, Sutton does not have information or knowledge sufficient to admit or deny the remaining allegations because that concern events that occurred, if at all, after he left Enron and he had no involvement in preparation of that report.

297. Sutton admits that the financial data is contained in the 2000 Annual Report although the financial data was presented in somewhat different form and with additional detail and qualifications. Otherwise, Sutton does not have information or knowledge sufficient to admit or deny the remaining allegations because that concern events that occurred, if at all, after he left Enron, and he had no involvement in preparation of that report.

298. Sutton admits that the paragraph quotes a portion of note 16 to Enron's 2000 financial statement.

299. Sutton admits that on January 21, 2001, Enron issued an earnings release for 4<sup>th</sup>Q 2000 and 2000, and that Enron stock traded as high as \$82-3/4 on February 5, 2001. Sutton denies that he pocketed any illegal insider trading proceeds. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph because he was not at Enron during the relevant time period.

300. Sutton cannot determine precisely which statements plaintiffs contend were false and misleading; therefore, other than to deny that many of the statements contained in paragraphs 215 through 298 were false and misleading, Sutton cannot respond further to this paragraph.

300(a). Sutton denies, based on what was known to him at the time, and also incorporates by reference his answers to paragraphs 418 through 611.

300(b) – 300(c). Sutton denies based on what was known to him at the time.

300(d). Sutton does not have knowledge or information sufficient to admit or deny these allegations

300(e). Sutton does not have knowledge or information sufficient to admit or deny these allegations except that he denies that at the time he knew about any manipulation or falsification that

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boosted the reported profitability of Enron's wholesale business. Sutton denies ever knowing of an entity referred to within Enron as WEOS.

300(f). Sutton does not have knowledge or information sufficient to admit or deny these allegations, except he denies that at the time he knew about any misuse and abuse of mark-to-mark accounting, or any improperly inflated contract valuations or improperly boosted financial results.

300(g). Sutton does not have knowledge or information sufficient to admit or deny these allegations except that he denies that at the time he knew about any use of unrealistic projections and mark-to-market accounting to mislead investors, as alleged.

300(h). Sutton does not have knowledge or information sufficient to admit or deny these allegations except that he denies that at the time he knew that EBS problems, if any, were as serious, persistent, or significant as plaintiffs allege, such that they could not be overcome, or that the prospects for success of EBS were "grossly overstated." Sutton denies that at the time he knew that EBS "was doomed to failure due to numerous intractable problems." Otherwise, Sutton does not have information or knowledge sufficient to admit or deny these allegations in this paragraph because, among other things, he had no connection with this part of the Enron business.

300(i). Sutton does not have knowledge or information sufficient to admit or deny the allegations made in paragraph 300(i) except that he denies substantive knowledge of "transactions involving so-called dark fiber[.]"

300(j). Sutton does not have knowledge or information sufficient to admit or deny these allegations except that he denies that he knew that Enron's accounting was an accounting manipulation that improperly inflated current-period results. Otherwise, Sutton does not have

information or knowledge sufficient to admit or deny the allegations in this paragraph because, among other things, he had no connection with this part of Enron's business.

300(k). Sutton does not have knowledge or information sufficient to admit or deny these allegations except that he denies that he knew that Enron lied about the number of its broadband customers.

300(l). Sutton denies that "the prospects for future revenue and profits from Enron's EBS operation and the purported value of that operation to Enron and to its stock price [were] completely arbitrary," and denies that he knew what Enron is alleged to have known.

300(m). Sutton does not have knowledge or information sufficient to admit or deny these allegations except that he denies that he knew that Enron grossly overstated information relating to its broadband business, as alleged.

300(n). Sutton does not have knowledge or information sufficient to admit or deny these allegations except that he denies that he knew that Enron was abusing and misusing mark-to-market accounting with respect to its broadband intermediation, as alleged.

300(o). Sutton does not have knowledge or information sufficient to admit or deny these allegations except he denies that he knew that Enron grossly misrepresented and overstated matters relating to its Blockbuster VOD joint venture or that the Blockbuster deal was a fraud, as alleged. Otherwise, Sutton does not have information or knowledge sufficient to admit or deny the allegations in this paragraph because, among other things, he had no connection with this part of Enron's business.

300(p). With regard to the first sentence, Sutton does not have knowledge or information sufficient to admit or deny these allegations because plaintiffs provide no details about any specific



representations concerning Enron's hedging and management of financial risk. With regard to the second, third, and fourth sentences, Sutton does not have knowledge or information sufficient to admit or deny these allegations except that he denies that he knew what is alleged, including that he knew that Enron did not deserve its investment-grade credit rating.

300(q) – 300(s). Sutton denies based on what was known to him at the time.

301. Sutton admits that on March 9, 2001, Enron announced that it had terminated its joint venture with Blockbuster and that, in general, Enron's stock declined after that announcement. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations. Sutton denies ever having no first-hand knowledge of these events and had left Enron before the relevant time period.

302 – 304. Sutton does not have knowledge or information sufficient to admit or deny the allegations, or accuracy of purported quoted material, contained in paragraphs 302 through 304.

305. Sutton admits that Enron's stock traded as low as \$51-33/64 on March 22, 2001. Otherwise, Sutton does not have information or knowledge sufficient to admit or deny the remaining allegations because he was not at Enron during much of the relevant time period.

306 – 308. Sutton does not have knowledge or information sufficient to admit or deny the allegations, or accuracy of purported quoted material, contained in paragraphs 306 through 308.

309. Sutton does not have information or knowledge sufficient to admit or deny the allegations in this paragraph because they concern events that occurred, if at all, after he left Enron.

310 – 312. Sutton does not have knowledge or information sufficient to admit or deny the allegations, or accuracy of purported quoted material, contained in paragraphs 310 through 312.

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313. Sutton admits that Enron's stock traded as low as \$51-33/64 on March 22, 2001. Otherwise, Sutton does not have information or knowledge sufficient to admit or deny the remaining allegations because they concern events that occurred, if at all, after he left Enron.

314. In the absence of any information as to the source(s) of the statements attributed to Enron and its bankers, and because some of the terms are, in this context, too vague and/or subjective and because the allegations concern events that occurred, if at all, after he left Enron. Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph.

315. Sutton admits that the paragraph quotes one sentence from an Enron press release dated April 3, 2001, and refers the Court to the entire release for its complete meaning and import. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations made in this paragraph because, among other things, he was not at Enron during the relevant time period.

316. Sutton admits that the paragraph quotes excerpts from Enron's April 17, 2001, earnings release, and refers the Court to the entire release for its complete meaning and import. Sutton does not have knowledge or information sufficient to admit or deny that the 1<sup>st</sup>Q 2001 results were "better-than-expected." Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations made in this paragraph because, among other things, he was not at Enron during the relevant time period.

317. Sutton does not have information or knowledge sufficient to admit or deny the allegations in this paragraph because they concern events that occurred, if at all, after he left Enron.

318 – 323. Sutton does not have knowledge or information sufficient to admit or deny the allegations, or accuracy of the purported quoted material, contained in paragraphs 318 through 323.

324. Sutton admits that Enron's stock traded as high as \$64-3/4 on April 30, 2001, that it traded as high as \$57-13/16 on May 8, 2001, and that it traded as low as \$52 on May 17, 2001. Sutton denies that Enron's stock traded as low as \$48-7/16 at any time on May 8, 9, or 10, 2001. Otherwise, Sutton does not have information or knowledge sufficient to admit or deny the remaining allegations because they concern events that occurred, if at all, after he left Enron.

325 – 327. Sutton does not have knowledge or information sufficient to admit or deny the allegations, or accuracy of the purported quoted material, contained in paragraphs 325 through 327.

328. Sutton admits that the paragraph quotes excerpts from Enron's July 12, 2001 earnings release and refers the Court to the entire release for its complete meaning and import. Otherwise, Sutton does not have information or knowledge sufficient to admit or deny the allegations in this paragraph because he was not at Enron during the relevant time period.

329. Sutton does not have information or knowledge sufficient to admit or deny the allegations in this paragraph because they concern events that occurred, if at all, after he left Enron.

330 – 335. Sutton does not have knowledge or information sufficient to admit or deny the allegations, or accuracy of the purported quoted material, contained in paragraphs 330 through 335.

336. The filing date, content and signatories of Enron's registration statement are a matter of public record at the SEC. Sutton denies the allegations in the first, second, and fourth sentences

only to the extent they are inconsistent with the public records. Otherwise, Sutton does not have information or knowledge sufficient to admit or deny the remaining allegations because they concern events that occurred, if at all, after he left Enron.

337 – 338. Sutton does not have knowledge or information sufficient to admit or deny the allegations, or accuracy of purported quoted material, contained in paragraphs 337 and 338.

339. Sutton cannot determine precisely which statements plaintiffs contend were false and misleading; therefore, other than to deny that many of the statements contained in paragraphs 301 – 338 were false and misleading, Sutton cannot respond further to this paragraph. Otherwise, Sutton does not have information or knowledge sufficient to admit or deny the allegations contained in paragraph 339(a) through 339(s) because, among other things, he was not at Enron during much of the relevant time period.

340. Sutton does not have information or knowledge sufficient to admit or deny the allegations this paragraph because they concern events that occurred, if at all, after he left Enron.

341. Sutton does not have knowledge or information sufficient to admit or deny the allegations, or accuracy of the purported quoted material, contained in this paragraph.

342. Sutton admits that in general the price of Enron's stock declined during the period May 2001 through July 2001, and that Enron's stock traded as low as \$42 on July 24, 2001, as low as \$42 on August 9, 2001, and as low as \$37-17/64 on August 29, 2001. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations made in this paragraph because, among other things, he was not at Enron during the relevant time period.

343. Sutton admits that on August 14, 2001, Enron announced that its CEO Skilling was resigning for personal reasons. Otherwise, Sutton does not have knowledge or information sufficient

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to admit or deny the allegations made in this paragraph because, among other things, he was not at Enron during the relevant time period.

344 – 349. Sutton does not have knowledge or information sufficient to admit or deny the allegations, or accuracy of purported quoted material, contained in paragraphs 344 through 349.

350. Sutton admits that Enron's stock traded at \$43-13/64 during the day of August 14, 2001, and traded at \$36-7/8 during the day of August 15, 2001. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations made in this paragraph because, among other things, he was not at Enron during the relevant time period.

351. Sutton does not have knowledge or information sufficient to admit or deny these allegations made in this paragraph because they concern events that occurred, if at all, after he left Enron.

352 – 358. Sutton does not have knowledge or information sufficient to admit or deny the allegations, or accuracy of purported quoted material, contained in paragraphs 352 through 358.

359. Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph because they concern events that occurred, if at all, after he left Enron.

360. Sutton admits that Enron's stock price declined between the middle of August 2001 and the end of September 2001. Sutton denies participating in, or knowing about, any fraudulent scheme. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph because he had left Enron before the relevant time period.

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361. Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph because they concern events that occurred, if at all, after he left Enron.

362 – 363. Sutton does not have knowledge or information sufficient to admit or deny the allegations, or accuracy of the purported quoted material, contained in paragraphs 362 through 363.

364. Sutton admits the allegations stated in the first sentence and admits that sentences in the paragraph quote excerpts from Enron's earnings release dated October 16, 2001, and refers the Court to the entire release for its complete meaning and import. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the remaining allegations because they concern events that occurred, if at all, after he left Enron.

365 – 366. Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in paragraphs 365 and 366 because the allegations concern events that occurred, if at all, after he left Enron.

367 – 376. Sutton does not have knowledge or information sufficient to admit or deny the allegations, or accuracy of purported quoted material, contained in paragraphs 367 through 376.

377. Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph because they concern events that occurred, if at all, after he left Enron.

378 – 381. Sutton does not have knowledge or information sufficient to admit or deny the allegations, or accuracy of the purported quoted material contained in paragraphs 378 through 381.

382. Sutton admits that the paragraph quotes excerpts from an Enron press release dated October 25, 2001, and refers the Court to the entire release for its complete meaning and import. Otherwise, Sutton does not have information or knowledge sufficient to admit or deny the allegations in this paragraph because he had left Enron before the relevant time period.

383. Sutton admits that the paragraph quotes excerpts from an Enron press release dated November 1, 2001, and refers the Court to the entire release for its complete meaning and import. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph because he had left Enron before the relevant time period.

384. On the assumption that the paragraph refers to the 8-K Enron filed on November 8, 2002, Sutton admits that Enron restated its 1997, 1998, 1999, and 2000 financial results. Sutton does not have knowledge or information regarding the accuracy of those restatements because, among other things, the restatements occurred a year after he left Enron.

385. Sutton denies that he participated in structuring any transactions involving the Chewco or LJM partnerships. Otherwise, he does not have knowledge or information sufficient to admit or deny the allegations in this paragraph.

386. Sutton denies that the allegations contained in this paragraph are accurate from his perspective, and he denies that he participated in concealing fraud.

387 –388. Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in paragraph 387 and 388 because the allegations concern events that occurred, if at all, after he left Enron.

389. Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph because they concern events that occurred, if at all, after he left Enron. Sutton denies that he participated in or had knowledge of an “Enron Ponzi scheme.”

390. Sutton cannot determine which statements plaintiffs contend were false and misleading; therefore, other than to deny that many of the statements contained in paragraphs 364 through 388 were false and misleading, Sutton cannot respond further to the first sentence. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph because they concern events that occurred, if at all, after he left Enron.

391. Sutton admits that Dynegy refused to acquire Enron; Enron’s publicly-traded debt was downgraded to below investment grade; Enron declared bankruptcy on December 2, 2001; and the market price for Enron’s stock and publicly-traded debt securities declined significantly. Sutton denies that he participated in or had knowledge of efforts to conceal Enron’s true financial condition or “wide-ranging falsification of [Enron’s] financial statements.” Otherwise, Sutton does not have knowledge or information sufficient to admit or deny other allegations because, among other things, he had left Enron before the relevant time period. Sutton denies having firsthand knowledge of these events.

392. Sutton admits that Congress investigated the failure of Enron and that some individuals associated with Enron or Andersen invoked their constitutional rights under the Fifth Amendment. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph.



393. Sutton denies that he participated in or had knowledge of the fraudulent scheme, manipulative devices and contrivances, or misrepresentations alleged in this paragraph.

394. Sutton denies the allegations in the first sentence as to himself. Sutton denies that he participated in wrongful conduct, or that he received illegal insider trading proceeds or illegal bonus payments.

395. Sutton denies that the allegations in the first and second sentences are accurate from his perspective. Sutton denies that he participated in, knew of, or acted in reckless disregard of, the falsification of Enron's financial reports or other false and misleading statements made about Enron's business operations.

396. Sutton denies as to himself.

397. Sutton denies as to himself.

398. Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph because the terms "normally the case" and "frequent contact" are vague and ambiguous. Sutton admits that public offerings could not have taken place without the authorization of Enron's Board of Directors, of which he was not a member.

399. Sutton admits that during his tenure with Enron he had access to non-public information relating to the Company, but he denies that he had such access simply by virtue of his position with the Company and denies that he had access to any and all *adverse* non-public information.

400. Sutton denies as to himself.

401. Sutton denies the allegations in the first sentence as to himself. Sutton refers to documents filed with the SEC for the details of his sales of Enron stock during the relevant time

period and denies the allegations pertaining to him only to the extent that they are inconsistent with those documents. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations pertaining to others.

402. Sutton denies that, taking into account all relevant considerations, he sold a “large” percentage of his Enron stock plus vested options. With regard to the table, Sutton refers to the Form 4 referenced in paragraph 402 and denies the allegations pertaining to him only to the extent that they are inconsistent with the Form 4. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations pertaining to others.

403. Sutton denies as to himself and does not have knowledge or information sufficient to admit or deny the allegations pertaining to others.

404 – 405. Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in these paragraphs.

406 – 409. These paragraphs do not contain any allegations of fact that require a response.

410. Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph.

411 – 415. These paragraphs do not contain any allegations of fact that require a response.

416. With regard to the information concerning “insider sales” set forth in Exhibit C to Exhibit Appendix, Sutton refers to documents filed with the SEC for the details of his sales of Enron stock during the relevant time period and denies the allegations pertaining to him only to the extent

that they are inconsistent with those documents. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations pertaining to others.

417. This paragraph does not require a response.

418. Sutton denies that he caused Enron to violate GAAP and SEC rules in any of the alleged ways.

419. Sutton admits that Enron restated its financial results for the years 1997, 1998, 1999, and 2000. Sutton does not have knowledge or information regarding the accuracy of those restatements because, among other things, the restatements occurred a year after he left Enron.

420. Sutton admits that restatement of Enron's financial results for the years 1997, 1998, 1999, and 2000 affected its "debt-to-equity" ratio for those periods. Plaintiffs do not give any information concerning the source(s) of the percentage figures alleged in this paragraph; therefore, Sutton cannot admit or deny the accuracy of those allegations. Sutton also admits that the debt-to-equity ratio is used by rating agencies to evaluate a corporation's credit rating. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph.

421. Sutton admits that restatement of Enron's financial results for the years 1997, 1998, 1999, and 2000 affected the ratios of debt-to-equity and earnings-to-fixed charges for those periods. Plaintiffs do not give any information concerning the source(s) of the percentage figures alleged in this paragraph; therefore, Sutton cannot admit or deny the accuracy of those allegations. Sutton admits that Enron restated its financial results for the years 1997, 1998, 1999, and 2000. Sutton does not have knowledge or information regarding the accuracy of those restatements because, among other things, the restatements occurred a year after he left Enron.

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422. Sutton denies having engaged in, or knowing about, “many other egregious manipulations of Enron’s financial statements which were not part of the restatement.” Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph.

423. Sutton admits that the restatement contained no adjustments attributable to a different treatment for mark-to-market accounting or for forward sales contracts, but Sutton denies knowing that any such adjustments were required. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph.

424. Except as to the matters covered by the 8-K filed November 8, 2001, Sutton denies the allegations in the first and second sentences based on his perspective. Sutton cannot confirm that all of the alleged data in the third sentence and table are consistent with what Enron reported in its SEC filings and denies the allegations only to the extent that they are, indeed, inconsistent with Enron’s SEC filings that are a matter of public record. Sutton admits that Enron restated its financial results for the years 1997, 1998, 1999, and 2000. Sutton does not have knowledge or information sufficient to admit or deny the accuracy of amounts reported because, among other things, he was not at Enron during much of the relevant time period.

425. Sutton admits that Enron included financial results in various earnings releases, SEC filings, and Registration Statements and Prospectuses, but Sutton denies that those results were as alleged in paragraph 424 to the extent that those allegations are inconsistent with Enron’s SEC filings that are a matter of public record. Sutton admits the allegations in the third sentence.

426. Based on what was known to him, Sutton denies the allegations made in this paragraph.

427 – 428. These paragraphs assert matters of legal and/or accounting opinion to which no response is required.

429. Sutton does not have knowledge or information sufficient to admit or deny the allegations made in this paragraph, except that he denies that he participated in or knew about a scheme to keep loans off Enron's financial statements and at the same time inappropriately record income from transactions with SPEs.

430 – 432. These paragraphs assert matters of accounting opinion to which no response is required.

433. Much of this paragraph – for example, the first and fourth sentences, the first part of the fifth sentence, and the footnote – assert matters of accounting opinion to which no response is required. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph, except he denies that he participated in, or knew about, efforts to improperly consolidate SPE's, as alleged, and he denies that the last sentence is accurate from his perspective.

434. Sutton does not have knowledge or information sufficient to admit or deny the accuracy of the purported quotation.

435. Sentences one through four assert matters of accounting opinion to which no response is required. To the extent they allege matters of fact, Sutton does not have knowledge or information sufficient to admit or deny the allegations. Sutton denies the allegations in the fifth sentence.

436. Sutton does not have knowledge or information sufficient to admit or deny the allegations made in this paragraph. Sutton denies ever having first-hand knowledge of these events.

437 – 440. These paragraphs assert matters of accounting opinion to which no response is required. To the extent they allege matters of fact, Sutton does not have knowledge or information sufficient to admit or deny the allegations.

441. Sutton denies that the “problems” with the independent equity in Chewco were known to him or openly discussed around him. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations in this paragraph.

442. The first and second sentences assert matters of accounting opinion to which no response is required. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny these allegations in this paragraph because, among other things, he was not at Enron during much of the relevant time period. Sutton denies ever having first-hand knowledge of these events.

443 – 446. These paragraphs assert matters of accounting opinion to which no response is required. To the extent they allege matters of fact, Sutton does not have knowledge or information sufficient to admit or deny the allegations.

447. Sutton does not have knowledge or information sufficient to admit or deny these allegations in this paragraph because, among other things, he was not at Enron during much of the relevant time period. Sutton denies ever having first-hand knowledge of these events.

448. The first sentence asserts matters of accounting and/or legal opinion to which no response is required. Sutton admits that for a period of time, Fastow was the managing member of the general partners of LJM1 and LJM2. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the other allegations made in this paragraph.

449. Sutton denies that, from his perspective, the LJM partnerships were controlled by Enron or were part of Enron. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations made in this paragraph.

450. Sutton admits that in its November 2001 restatement, Enron reduced earnings by \$95 million and \$8 million for 1999 and 2000, respectively, and reduced assets by \$222 million for 1999. Otherwise Sutton does not have knowledge or information sufficient to admit or deny the allegations made in this paragraph because, among other things, he was not at Enron during much of the relevant time period.

451. Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph.

452. Sutton admits the allegations in this paragraph.

453. Sutton refers to the publicly available records concerning the IPO price and historical stock prices thereafter of Rhythms. Otherwise Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph.

454. Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in the first, second, third, and fourth sentences. The fifth sentence states matters of accounting opinion to which no response is required.

455 – 459. Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in these paragraphs.

460. Sutton admits that LJM2 was formed in 1999 and that, for a time, Fastow was the managing member of the general partner of LJM2. Sutton denies the characterization of approvals by the Board and the Finance Committee based on the relevant Minutes of the Board and Finance

Committee. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph.

461. Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph.

462. This paragraph asserts matters of accounting opinion to which no response is required. To the extent the paragraph alleges matters of fact, Sutton does not have knowledge or information sufficient to admit or deny the allegations.

463. Sutton denies that he participated in the restructuring of the Raptor vehicles. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations made in this paragraph because, among other things, he was not at Enron during the relevant time period.

464. Sutton admits that in connection with the 3<sup>rd</sup>Q 2001, Enron reported a reduction to shareholders' equity of approximately \$1.2 billion and reported an after-tax charge of \$544 million (\$710 million pre-tax) as one component of the total charges to net income. The second and third sentences assert matters of accounting opinion to which no response is required. To the extent these sentences allege matters of fact, Sutton does not have knowledge or information sufficient to admit or deny the allegations because, among other things, he was not at Enron during the relevant time period.

465. Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph because, among other things, he was not at Enron during the relevant time period.



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466. Sutton admits that Enron and the LJM partnerships engaged in transactions, but he denies knowing that they were “manipulative” and does not have knowledge or information sufficient to admit or deny allegations concerning the number of such transactions between September 1999 and July 2001.

467. Sutton admits that Enron built a power plant in Cuiaba, Brazil. Most of this paragraph concerns accounting opinions to which no answer is required. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph.

468. This paragraph asserts matters of accounting and/or legal opinion to which no response is required. To the extent the paragraph alleges matters of fact, Sutton does not have knowledge or information sufficient to admit or deny the allegations.

469 – 470. Sutton does not have information or knowledge sufficient to admit or deny the allegations in paragraphs 469 and 470.

471. Sutton admits that Enron owned an interest in the Nowa Sarzyna power plant in Poland. This paragraph contains accounting and /or legal opinions to which no response is required. Otherwise, Sutton does not have information or knowledge sufficient to admit or deny the remaining allegations in paragraph 471.

472 – 477. Sutton does not have information or knowledge sufficient to admit or deny the allegations in paragraph 472 through 477.

478. Sutton does not have knowledge or information sufficient to admit or deny the allegations in the first and second sentences. The third and fourth sentences assert matters of

accounting opinion to which no response is required. To the extent they allege matters of fact, Sutton does not have knowledge or information sufficient to admit or deny the allegations.

479. Sutton does not have knowledge or information sufficient to admit or deny the allegations in this paragraph. Sutton denies ever having first-hand knowledge of these events.

480. Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph 480.

481. The second sentence asserts matters of accounting opinion to which no response is required. Sutton does not have knowledge or information sufficient to admit or deny the allegations made in the other sentences in this paragraph.

482. Sutton admits the allegations in the first sentence. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the remaining allegations made in this paragraph.

483 – 484. Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in these paragraphs.

485. Sutton does not have knowledge or information sufficient to admit or deny the allegations made in this paragraph.

486. Sutton refers to publicly available records concerning the historical stock prices of TNPC. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations made in this paragraph.

487. Sutton admits that New Power was a retail power company and that Enron owned a large stake in it before the IPO. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations made in this paragraph.

488 – 490. Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in these paragraphs because, among other things, he was not at Enron during much of the relevant time period.

491 – 493. These paragraphs assert matters of accounting opinion to which no response is required. To the extent they allege matters of fact, Sutton does not have knowledge or information sufficient to admit or deny the allegations because, among other things, he was not at Enron during much of the relevant time period.

494. The first and second sentences assert matters of accounting opinion to which no response is required. Sutton admits that the third sentence quotes an excerpt from Enron's November 8, 2001 8-K or paraphrases a statement in the 8-K, and refers the Court to the entire 8-K filing for its complete meaning and import. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations because, among other things, he was not at Enron during much of the relevant time period.

495. Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph because, among other things, he was not at Enron during the relevant time period.

496. Sutton does not have knowledge or information sufficient to admit or deny the allegations made in this paragraph and/or subparagraphs (a) and (b), except that Sutton denies that he participated in efforts to conceal billions of dollars of debt, as alleged.

497. Sutton does not have knowledge or information sufficient to admit or deny the allegations made in this paragraph.

498 – 500. Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in these paragraphs. These paragraphs also assert matters of accounting and/or legal opinion to which no response is required.

501. This paragraph asserts matters of accounting opinion to which no response is required.

502 – 505. These paragraphs assert matters of accounting and/or legal opinion to which no response is required. To the extent the allege matters of fact, Sutton does not have knowledge or information sufficient to admit or deny those allegations.

506. Sutton denies that he participated in or knew about the scheme that is alleged or efforts to cause Enron's financial statements to be materially false and misleading. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations made in this paragraph.

507 – 509. These paragraphs assert matters of accounting and/or legal opinion to which no response is required.

510. Sutton denies the allegations in the first sentence. Sutton admits that the Notes to the Consolidated Financial Statements in Enron's 10-Ks for 1997 and 1998 do not include a section on "Related Party Transactions." With regard to the third and fifth sentences, Sutton admits that plaintiffs have quoted from Enron's 10-K for 2000 and refers to the entire 10-K for its complete meaning and import and what was disclosed or not disclosed. Otherwise, paragraph 510 asserts matters of legal and/or accounting opinion to which no response is required. Sutton does not have information or knowledge sufficient to admit or deny allegations in this paragraph concerning Fastow.

511. The first and second sentences assert matters of legal opinion to which no response is required. Sutton does not have knowledge or information sufficient to admit or deny the allegations in the third and fourth sentences, except that Sutton admits that there was discussion within Enron and with outside legal counsel about what disclosures, if any, needed to be made regarding Fastow's relationship with LJM.

512. Sutton admits the allegations in the first and third sentences and that LJM1 and LJM2 were discussed in the proxy statement Enron filed in March (not May) of 2000. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations in this paragraph.

513. Sutton admits the allegations in the first and second sentences and that the footnote entitled "Related Party Transactions" did not identify Fastow as the "senior officer of Enron." Sutton denies the allegation as to all subsequent financial statements footnotes. The fourth sentence asserts, at least by implication, matters of legal and/or accounting opinion to which no response is required. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny these allegations, because the allegations are too vague.

514. Sutton admits the allegations in the first sentence. With regard to the second sentence, Sutton refers to the financial statement disclosures cited.

515. Sutton denies the allegations in the first and second sentences based on what was known to him at the time. With regard to the remaining allegations, Sutton admits that plaintiffs quote excerpts from Enron's Form 10-Qs for 2<sup>nd</sup>Q 1999, 3<sup>rd</sup>Q 1999, and 1<sup>st</sup>Q 2000, and refers the Court to the entire 10-Qs for their complete meaning and import. Sutton denies that he was not involved in preparing the financial statements referred to in this paragraph.

516. Sutton denies based on what was known to him at the time.

517. Sutton admits that Enron announced that the restatement included prior year proposed audit adjustments and reclassifications, which had been determined to be immaterial in the year originally proposed, that the proposed adjustment for 1997 was \$51 million, and that \$51 million represented 48% of net income (but only *after* a significant contract restructuring charge of \$463 million) and 10% of recurring net income. The sixth sentence asserts matters of accounting opinion to which no response is required. Otherwise, Sutton does not have information or knowledge sufficient to deny or admit the allegations in this paragraph.

518. Sutton denies the allegations in the first and sixth sentences. The second, third, and fourth sentences assert matters of accounting opinion to which no response is required. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations in this paragraph.

519. Sutton denies having engaged in or known about “many other egregious manipulations of Enron’s financial statements which were not part of the restatement.” Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph.

520. Sutton admits that Enron entered the broadband business and that Enron laid fiber optic cable. Sutton denies the allegations in the second sentence and that he engaged in or knew about accounting manipulations with respect to broadband, including improper accounting for a deal with Blockbuster, improper use of mark-to-market accounting, or improper recognition of income from swaps of fiber optic capacity.

521. Sutton admits that in July 2000 Enron announced a joint venture with Blockbuster. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the

(

allegations in this paragraph because, among other things, he was not at Enron during much of the relevant time period.

522 – 524. Sutton does not have knowledge or information sufficient to admit or deny the allegations made in these paragraphs because, among other things, he was not at Enron during much of the relevant time period.

525. This paragraph asserts matters of accounting opinion to which no response is required. To the extent the paragraph alleges matters of fact, Sutton does not have knowledge or information sufficient to admit or deny the allegations.

526. With regard to the first sentence, Sutton admits (as alleged in paragraph 301) that on March 9, 2001, Enron announced that *it* had terminated its joint venture with Blockbuster. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny these allegations because, among other things, he was not at Enron during the relevant time period. Sutton denies ever having first-hand knowledge of these events.

527. Sutton does not have knowledge or information sufficient to admit or deny the allegations made in this paragraph, except that Sutton admits that the second sentence sets forth a rough but workable definition of “dark fiber.”

528. Sutton admits that Enron engaged in broadband trading. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph.

529 – 532. Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in these paragraphs.

533. Sutton denies that he participated in or had knowledge of gross abuse of mark-to-market accounting by Enron on its energy trading contracts and broadband transactions.

534. The first, second, third, and fifth sentences assert matters of accounting opinion to which no response is required. Sutton admits that Enron used mark-to-market accounting in some circumstances; otherwise Sutton does not have knowledge or information sufficient to admit or deny the allegations in the fourth sentence. Sutton denies that he had the knowledge alleged of the Enron Defendants. He does not have knowledge or information sufficient to admit or deny the allegations as to other defendants.

535. Sutton admits that the second sentence sets forth a workable definition of demand-side management (“DSM”) contracts. The first, third, fourth, fifth, and sixth sentences assert matters of accounting opinion to which no response is required. To the extent the sentences assert matters of fact, Sutton does not have knowledge or information sufficient to admit or deny the allegations.

536. The first sentence asserts matters of accounting opinion to which no response is required. To the extent the sentence asserts matters of fact, Sutton does not have knowledge or information sufficient to admit or deny the allegations. Sutton denies participating in the conduct that is alleged or having the state of mind that is alleged of the Enron Defendants. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations made in this paragraph.

537. Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph.



538. Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph.

539. Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph.

540. Sutton admits that at one time Lay was on the Board of Eli Lilly and Company. Sutton denies that he participated in abuse of mark-to-mark accounting. Otherwise Sutton does not have knowledge or information sufficient to admit or deny the allegations in this paragraph because, among other things, he was not at Enron during much of the relevant time period.

541. Sutton admits the allegations in the first sentence. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations in this paragraph because, among other things, he was not at Enron during much of the relevant time period.

542 – 543. Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in these paragraphs because, among other things, he was not at Enron during the relevant time period.

544. Sutton admits that EES entered into long-term energy management contracts with J.C. Penney, IBM, and Owens Illinois, but otherwise Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph.

545 – 546. These paragraphs assert matters of accounting opinion to which no response is required. To the extent they assert matters of fact, Sutton does not have knowledge or information sufficient to admit or deny those allegations.

547 – 548. Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in these paragraphs.

549. Sutton denies participating in, or knowing about, the issuance of false and misleading financial statements that materially overstated the value of its Merchant Assets.

550. Sutton admits that within Wholesale Services there was a business line called Assets and Investments, which, in general, covered the activities alleged. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph.

551. Sutton admits the allegations in the first sentence. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny these allegations in this paragraph.

552 – 553. These paragraphs assert matters of accounting opinion to which no response is required.

554. Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph.

555. This paragraph asserts matters of accounting opinion to which no response is required.

556. Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph.

557. Sutton admits that EES entered into a transaction with Quaker Oats, but otherwise Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph.

558. Sutton denies that he participated in deceptive transactions with certain banking defendants to disguise loans to Enron as hedging or derivative transactions.

559 – 561. Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in these paragraphs.

562. This paragraph asserts matters of accounting and/or legal opinion to which no response is required. To the extent the paragraph alleges matters of fact, Sutton does not have knowledge or information sufficient to admit or deny the allegations.

563 – 567. Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in these paragraphs because, among other things, he was not at Enron during the relevant time period.

568. Sutton denies that he participated in, or knew about, manipulation of debt-to-equity ratios and reducing the amount of reported debt by mischaracterizing transactions with CitiGroup and CS First Boston.

569. Sutton denies that he participated in, or knew about, any “disguised loan” between Enron and Connecticut Resources Recovery Authority and Connecticut Light & Power Company.

570 – 572. Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in these paragraphs because, among other things, he was not at Enron during the relevant time period.

573. This paragraph asserts matters of accounting and/or legal opinion to which no response is required. To the extent the paragraph asserts matters of fact, Sutton does not have knowledge or information sufficient to admit or deny those allegations because, among other things, he was not at Enron during the relevant time period.

574. This paragraph asserts matters of accounting opinion to which no response is required.

575. Sutton admits that sometimes Enron used non-recourse debt to finance plant building projects. The fifth sentence asserts matters of accounting opinion to which no response is required.

Otherwise, Sutton does not have knowledge or information sufficient to admit or deny these allegations, in part because the allegations are too general and overly vague.

576 – 579. These paragraphs assert matters of accounting opinion to which no response is required. To the extent they assert matters of fact, Sutton does not have knowledge or information sufficient to admit or deny those allegations.

580. Sutton denies that he participated in, or knew about, improper capitalization of costs associated with unsuccessful bids for projects or cloaking the true nature of the writedown, as alleged. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations in this paragraph.

581. Sutton denies that at the time he knew about any improper deferral of capital expenditures or accumulation of deferred expenses by Enron International. Otherwise, Sutton does not have information or knowledge sufficient to admit or deny the remaining allegations in this paragraph.

582. Sutton denies, based on what was known to him at the time.

583. Sutton denies that he participated in, or knew about, falsification of Enron's financial statements by failing to record losses for the impairment of certain long-term assets and investments.

584 – 585. These paragraphs assert matters of accounting opinion to which no response is required.

586. The first sentence asserts matters of accounting and/or legal opinion to which no response is required. To the extent the sentence asserts matters of fact, Sutton does not have knowledge or information sufficient to admit or deny. Sutton denies the allegations in the second sentence based on what was known to him at the time.

587. Sutton denies having the knowledge alleged of the “Enron Defendants,” and denies participating in, or knowing about, any failure to take required writedowns.

588. Sutton admits that the paragraph quotes excerpts from Enron’s earnings release dated October 16, 2001, and refers the Court to the entire release for its complete meaning and import. Otherwise, Sutton does not have information or knowledge sufficient to admit or deny the allegations in this paragraph because he was not at Enron during the relevant time period.

589. Sutton denies based on what was known to him at the time.

590. Sutton admits the allegations in the first through third, fifth, sixth, and tenth sentences. Sutton further admits that Azurix encountered unanticipated difficulties and was unsuccessful as a business, and that Azurix’s stock price initially increased after the IPO and later declined. Sutton denies the allegations in the seventh sentence based on what he knew at that time.

591. Sutton admits that Mark-Jusbasche left the Company in 2000; Enron recorded an after-tax charge of \$326 million in 2000 to reflect impairment by Azurix; Enron announced plans to take Azurix private in late 2000; and Enron took Azurix private for about \$330 million in March 2001. Sutton denies that he knew Azurix was impaired from the time of acquisition, if not before. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the other allegations made in this paragraph.

592. Sutton does not have knowledge or information sufficient to admit or deny the allegations made in this paragraph because they concern events that occurred, if at all, after he left Enron.

593. Sentences one and six assert matters of accounting and/or legal opinion to which no response is required. Sutton admits that Atlantic Water Trust was formed by Enron and institutional

investors, investing through an entity named Marlin for the purpose of acquiring and holding an interest in Azurix, and that Marlin was capitalized with approximately \$915 million in debt and \$125 million in equity. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations made in this paragraph.

594. Sutton denies the allegations in the first sentence based on what was known to him at the time. Sutton further denies that he had any responsibility to make writedowns, as impliedly alleged, or that he participated in the alleged failure to make adequate and timely writedowns.

595. Sutton denies the allegations in the second sentence based on what was known to him at the time. Sutton admits that in the 3<sup>rd</sup>Q 2001, Enron recorded a charge related in part to impairment of its broadband business; otherwise, the fifth sentence asserts matters of accounting opinion to which no response is required. Otherwise, Sutton does not have sufficient knowledge or information to admit or deny these allegations because, among other things, he was not at Enron during much, if not all, of the relevant time period.

596. Sutton admits that Enron was a partial owner of TGS and that TGS owned a gas pipeline in Argentina, but otherwise Sutton does not have knowledge or information to admit or deny the allegations made in this paragraph.

597. Sutton denies that he participated in, or knew about, efforts to improperly keep the allegedly impaired New Power asset off Enron's financial statements. Sutton does not have knowledge or information sufficient to admit or deny any remaining allegations made in this paragraph.

598. Sutton admits that in the early 1990s Enron became involved in building a power plant in Dabhol, India, that the project encountered a series of problems or setbacks, that the project

was halted in 1995 because of political changes in India, that the agreement terms were renegotiated, and that the project was not completed at the time of Sutton's departure from Enron. Sutton denies knowledge of cost overruns so "huge" as to render the project economically unfeasible. Otherwise, paragraph 598 states legal and/or accounting conclusions to which a response is not required.

599. Sutton admits that Enron encountered regulatory/political problems in completing the project. Otherwise, paragraph 599 states accounting and/or legal conclusions to which no response is required. Sutton does not have information or knowledge sufficient to deny the remaining allegations in this paragraph because he had left Enron before September 30, 2001.

600. Sutton does not have knowledge or information sufficient to admit or deny the accuracy of the purported quotation.

601. Sutton admits that in its Form 10-K for 2000 Enron reported a \$693 million investment in Dabhol, which represented a net 50% voting interest in the project. The statement regarding the recording of an impairment charge states an accounting and/or legal conclusion to which no response is required. Otherwise, Sutton denies that he had any responsibility to record an impairment charge, as impliedly alleged, or that he participated in the alleged failure to record an impairment charge.

602. Sutton denies the allegations in the second sentence. With regard to the first sentence, the allegations are vague and unspecific as to the time of the sale of the interest in Dabhol. Sutton, therefore, can only respond by admitting that prospective buyers sought discounts in purchasing Enron's interest in Dabhol.

603. Sutton denies that he participated in or had knowledge of aggressive accounting to improperly keep debt, losses, and expenses off Enron's books and contingent liabilities out of its

financial reporting, as alleged. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph.

604. Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph.

605. The first sentence states legal and/or accounting conclusions to which no response is required. Sutton admits that Enron successfully bid on a controlling share in Elektro in July 1998 and that Enron purchased additional shares of Elektro in February 1999. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph.

606. Sutton denies that he participated in, or had knowledge of, the alleged failure to make timely and adequate accruals for the impairment of Enron's investment in Elektro. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations made in this paragraph.

607. Sutton admits that Enron had an interest in PromiGas. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph.

608 – 609. Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in these paragraphs because, among other things, he was not at Enron during the relevant time period.

610. Sutton denies that he caused Enron to violate GAAP as alleged. Otherwise, the paragraph asserts matters of accounting opinion to which no response is required.



611. Sutton denies that he concealed adverse information that he knew was expected to be and must be disclosed and that investors and securities analysts expected to be disclosed.

612. Sutton admits that Enron's Offering Documents usually incorporated by reference specifically identified SEC filings or reports; the "10-K incorporation" for any particular offering is a matter of public record with the SEC. Sutton denies the information as set forth in the chart only to the extent any of it is inconsistent with the public records.

613. Sutton denies the allegations in the first and second sentences and that the referenced Offering Documents were false and misleading based on what was known to him at the time. Sutton incorporates by reference his answers to paragraphs 418 through 611. The third, fourth, fifth, sixth, and eighth sentences assert matters of legal and/or accounting opinion to which no response is required. To the extent they allege matters of fact, Sutton denies the allegations based on what was known to him at the time. Sutton admits the allegations in the seventh sentence based on the Registration Statement referenced in that sentence.

614. With regard to the first sentence, Sutton admits that Enron filed a 12/31/97 Registration Statement. Sutton refers to that Registration Statement for the precise contents and details and denies the allegations in the first sentence only to the extent that they are inconsistent with the publicly-available Registration Statement. Sutton denies knowing that any of Enron's statements concerning the Dabhol plant were false and misleading.

615. Sutton refers to the Registration Statement for the precise contents and details and denies the allegations in the first, second, third, and fourth sentences only to the extent that any allegations are inconsistent with the Registration Statement. The fifth sentence asserts matters of

legal and/or accounting opinion to which no response is required. To any extent the fifth sentence alleges matters of fact, Sutton denies the allegations based on what was known to him at the time.

616. Sutton denies based on what was known to him at the time.

617. Sutton does not have knowledge or information sufficient to admit or deny these allegations relating to the “state of mind” of unspecified lawyers and banks.

618. Sutton denies the allegations in the first sentence based on what was known to him at the time. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations made in this paragraph.

619. With regard to the first, second, and third sentences, Sutton does not have knowledge or information sufficient to admit or deny the allegations made in these sentences, in part, because after a reasonable search he cannot find the allegedly incorporated disclosure(s). Sutton does not have knowledge or information sufficient to admit or deny the allegations in the fourth and fifth sentences relating to the “state of mind” of unspecified lawyers and banks.

620. Sutton does not have knowledge or information sufficient to admit or deny the allegations made in this paragraph, in part because Sutton, after a reasonable search, cannot find the allegedly incorporated disclosure(s).

621. Sutton denies that he had the knowledge alleged in the last sentence of “those on the inside,” but otherwise Sutton does not have knowledge or information sufficient to admit or deny the allegations made in this paragraph, in part because Sutton, after a reasonable search, cannot find the allegedly incorporated disclosure(s).

622. Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph because, among other things, he was not at Enron during the relevant time period.

623. Sutton denies that it is obvious that the alleged misstatements misled market sophisticates. Otherwise, he does not have knowledge or information sufficient to admit or deny the allegations made in this paragraph because, among other things, he was not at Enron during the relevant time period.

624. Sutton denies the allegations in the first, second, and fourth sentences based on what was known to him at the time. Sutton admits that Enron stated, in general, what is alleged in the third sentence, but he does not have knowledge or information sufficient to admit or deny that the “defendants” stated it. Sutton denies, based on what was known to him at the time, that Enron had materially compromised its Financial Risk Management through bogus hedging transactions. Sutton does not have knowledge or information sufficient to admit or deny the allegations concerning what the banks and Vinson & Elkins knew.

625. Sutton admits that the paragraph quotes excerpts from Enron’s 2000 10-K (and Sutton refers the Court to the entire 10-K for its complete meaning and import), and Sutton admits that the Offering Documents for zero coupon convertible senior notes (filed July 13, 2001) incorporated Enron’s 2000 10-K.

626. Sutton denies the allegations in the first, second, and fifth sentences based on what was known to him at the time. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the remaining allegations in the paragraph because, among other things, he was not at Enron during much of the relevant time period.

627. Sutton admits Enron's 2000 10-K contains information pertaining to "Non-Trading Market Risk," including \$7 million value at risk for the component "equity" for the year 2000. Sutton denies, based on what was known to him at the time, that any statements of "Non-Trading Market Risk" were materially understated or materially false and misleading. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph.

628. Sutton denies the allegations in the first, second, and third sentences based on what was known to him at the time. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the remaining allegations made in this paragraph.

629. Sutton admits that the 2000 10-K reflected credit reserves of \$452 million and refers the Court to the entire 10-K for its complete meaning and import. Otherwise, Sutton does not have information or knowledge sufficient to admit or deny the remaining allegations because, among other things, he was not at Enron during much, if not all, of the relevant time period.

630. Sutton denies the allegations in the first sentence based on what was known to him at the time. Sutton further denies that he anticipated a material impact to Enron's financial position due to its credit exposure, and that he engaged and participated in constructing a "house of cards" so that he could protect hundreds of millions of dollars. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in these sentences because, among other things, he was not at Enron during much of the relevant time period.

631. Sutton denies the allegations in the first sentence based on what was known to him at the time. Sutton admits that the second sentence quotes excerpts (not altogether accurately) from Enron's 1999 10-K and refers the Court to the entire 10-K for its complete meaning and import.

632. Sutton denies the allegations in the first sentence based on what was known to him at the time. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the remaining allegations in this paragraph.

633. Sutton denies the allegations in the first sentence based on what was known to him at the time. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the remaining allegations in this paragraph, in part, because some of the terms are too vague and/or subjective.

634. Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraph.

635. Sutton denies the allegations in the second sentence based on what was known to him at the time. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the remaining allegations in this paragraph.

636. Sutton admits that the paragraph quotes excerpts from the Form 10-K Enron filed for 2000 and refers the Court to the entire 10-K for its complete meaning and import. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the remaining allegations in this paragraph because he was not at Enron during much, if not all, of the relevant time period.

637. Sutton denies the allegations in the first sentence based on what was known to him at the time. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the remaining allegations in this paragraph.

638 – 639. Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in this paragraphs because, among other things, he was not at Enron during much of the relevant time period.

640. Although Enron's Offering Documents typically incorporated by reference one or more 10-K's or 10-Q's, which, in turn, often contained statements about EES, Sutton cannot admit or deny this sentence due to its non-specificity. Sutton essentially admits the allegations in the second and third sentences (although he would not characterize the improvement as "dramatic" and points out that there is a minor error in the quotation from the 10-Q). With regard to the fourth sentence, Sutton denies, based on what he knew at the time, that the numbers were materially false and misleading. The remainder of the sentence asserts matters of legal and/or accounting opinion to which no response is required.

641.1–641.44. These paragraphs are directed to the banks as underwriters/initial purchasers, including Deutsche Bank, CSFB, CS First Boston, CitiGroup, Barclays, Lehman Brothers, Bank America, JP Morgan, CIBC, and individuals associated with these entities. Accordingly, these paragraphs do not require a response from Sutton. In general, Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in these paragraphs in part because he was not at Enron during some of the relevant time periods. In general, Sutton denies that he knew of or participated in any "scheme" to deceive or "foist" sales onto purchasers as alleged in these paragraphs.

642 – 799. These paragraphs are directed to the banks JP Morgan, CitiGroup, CS First Boston, CIBC, Bank America, Merrill Lynch, Barclays, Deutsche Bank, and Lehman Brothers. Accordingly, they do not require a response from Sutton. In general, Sutton does not have knowledge or information sufficient to admit or deny the allegations contained in these paragraphs. Sutton denies that he knew of or participated in any "scheme" to deceive as alleged in these paragraphs.

800 – 856. These paragraphs are directed to the law firm Vinson & Elkins. Accordingly, they do not require a response from Sutton. In general, Sutton knows and admits that Vinson & Elkins served as outside legal counsel for Enron on various matters, but otherwise Sutton does not have knowledge or information sufficient to admit or deny to allegations contained in these paragraphs. Sutton denies that he knew of or participated in any “scheme” to defraud as alleged in these paragraphs.

857 – 896. Lead Plaintiff has deleted these paragraphs.

897 – 982. These paragraphs are directed to Andersen. Accordingly, they do not require a response from Sutton. In general, Sutton knows and admits that Arthur Andersen LLP was the independent public accountant that audited Enron during the period 1998 through 2001, but otherwise Sutton does not have knowledge or information sufficient to admit or deny the allegations made in these paragraphs. Sutton denies that he knew of or participated in any “scheme” to defraud as alleged in these paragraphs.

983. Sutton admits that Enron’s securities were listed and actively traded on the NYSE and the Over-the-Counter markets, that Enron filed periodic public reports with the SEC, that Enron communicated with public investors via press releases and analyst conferences and conference calls, and that Enron was followed by several securities analysts who wrote reports, but Sutton does not have knowledge or information sufficient to admit or deny any other allegations.

984. The second sentence asserts matters of legal opinion to which no response is required. Otherwise, Sutton does not have knowledge or information sufficient to admit or deny the remaining allegations in the paragraph.

985. Sutton denies that he is liable for each forward-looking statement pleaded.

986 – 991. To the extent an answer is required, Sutton denies that this purported class action may properly be brought on behalf of the alleged class.

992. Sutton incorporates by reference his answers to paragraphs 1 – 991.

993. This paragraph does not require a response.

994 – 997. Sutton denies as to himself.

998. Sutton incorporates by reference his answers to paragraphs 1 - 997.

999. This paragraph does not require a response.

1000. The first sentence does not require a response. With regard to the second sentence, Sutton does not presently have knowledge or information sufficient to admit or deny.

1001 – 1004. Sutton denies as to himself.

1005 – 1016.28. These paragraphs assert claims against defendants other than Sutton. Accordingly, they do not require a response from Sutton.

### **AFFIRMATIVE DEFENSES**

#### **First Defense: Failure to State a Claim**

The First Amended Consolidated Complaint fails to state facts sufficient to constitute a valid cause of action against Sutton. Among other things, the First Amended Consolidated Complaint fails to plead fraud with particularity as required by Rule 9(b) of the Federal Rules of Civil Procedure and the PSLRA. The First Amended Consolidated Complaint further fails to plead facts sufficient to allege that Sutton was a control person for purposes of Section 20(a) of the Securities Exchange Act of 1934, as required by the PSLRA and the Federal Rules of Civil Procedure.



**Second Defense: Statute of Limitations**

Plaintiffs' claims against Sutton are barred, in whole or in part, by the applicable statutes of limitations.

**Third Defense: Waiver**

Plaintiffs, by acts, omissions and/or conduct, have waived, in whole or in part, their right to obtain the relief sought in the First Amended Consolidated Complaint.

**Fourth Defense: Estoppel**

Plaintiffs, by acts, omissions and/or conduct, are estopped, in whole or in part, from obtaining the relief sought in the First Amended Consolidated Complaint.

**Fifth Defense: Failure to Mitigate**

Plaintiffs have failed to fulfill their duty to mitigate, reduce, or otherwise avoid the alleged damages and are, therefore, barred from recovery.

**Sixth Defense: Lack of Standing**

Plaintiffs lack standing to bring the causes of action asserted in the First Amended Consolidated Complaint.

**Seventh Defense: Injury Causation**

Plaintiffs' claims against Sutton are barred because Sutton did not directly or proximately cause or contribute to any damage, loss or injury sustained by Plaintiffs.

**Eighth Defense: Transaction Causation**

Plaintiffs' claims against Sutton are barred because Sutton's actions or inactions were not the sole or partial cause of any decision by any Plaintiff to purchase or sell Enron securities.

#### **Ninth Defense: Proportionate Responsibility**

Any damage, loss or liability allegedly sustained by plaintiffs must be diminished, and/or eliminated in proportion to the wrongful or negligent conduct of entities or individuals other than Sutton under the principles of equitable allocation, recoupment, set-off, proportionate responsibility, and comparative fault, including under the proportionate liability provisions of the Securities Exchange Act of 1934 and PSLRA.

#### **Tenth Defense: Intervening and Superseding Cause**

Plaintiffs' damages, if any, resulted from the acts or omissions of third parties or other Defendants over whom Sutton had no control. The acts of such third parties of Defendants constitute intervening or superseding causes of the harm, if any, suffered by Plaintiffs.

#### **Eleventh Defense: Failure to Join Indispensable Parties**

The plaintiffs have failed to join necessary and indispensable parties.

#### **Twelfth Defense: Assumption of Risk**

Plaintiffs' claims against Sutton are barred, in whole or in part, because they assumed the risks disclosed in Enron's public disclosures and those risks caused Plaintiffs' losses, if any.

#### **Thirteenth Defense: Actual or Constructive Knowledge**

Plaintiffs' claims against Sutton are barred because, at the time Plaintiffs acquired shares of Enron stock, they had actual or constructive knowledge of the alleged omissions or misstatements.

#### **Fourteenth Defense: Reasonable Care and Diligence**

Plaintiffs claims against Sutton are barred because Sutton at all times acted with reasonable care and diligence with respect to the matters Plaintiffs now contend were misrepresented by, or omitted from, Enron's public filings and public statements.

#### **Fifteenth Defense: Reliance on Professionals**

In his work for Enron, Sutton was entitled to and did reasonably rely on the work, conclusions and advice provided by agents of Andersen, Vinson & Elkins, and other professionals. As a result of that reasonable reliance, Sutton did not know, in the exercise of reasonable diligence could not have known, and had no reasonable grounds to believe that Enron's public filings contained material misrepresentations or omissions.

#### **Sixteenth Defense: No Material Misrepresentations or Omissions**

Plaintiffs' claims against Sutton are barred, in whole or in part, because the relevant registration statements did not contain any misrepresentations or omissions or because the misrepresentations or omissions relied upon by Plaintiffs were not material.

#### **Seventeenth Defense: Truth in the Market**

When Plaintiffs purchased their Enron securities, the total mix of information in the market disclosed the truth about Enron such that the price of the securities Plaintiffs purchased reflected the effect of the transactions and events Plaintiffs contend were concealed or misrepresented.

#### **Eighteenth Defense: Tracing**

Plaintiffs' claims against Sutton are barred, in whole or in part, because Plaintiffs cannot prove that they purchased securities traceable to a registration statement.

#### **Nineteenth Defense: Offset for Tax Benefit**

Any recovery for damages allegedly incurred by plaintiffs is subject to offset in the amount of any tax benefit actually received by plaintiffs through their investments..

### **Twentieth Defense: Contemporaneous Trades**

Sutton is not liable under Section 20A of the 1934 Securities Act because Plaintiffs have failed to plead and cannot prove contemporaneous trading by Sutton and Plaintiffs.

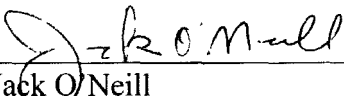
### **Thirty-First Defense: PSLRA Safe Harbor**

Sutton is not liable for alleged untrue statements of material fact, omissions of material fact, misleading statements, or other challenged statements that fall within the Safe Harbor provisions of the PSLRA.

### **Reservation of Right to Amend**

The lack of particularity in the First Amended Consolidated Complaint makes it impossible for Sutton to determine at this time which additional defenses he may have. Sutton therefore reserves the right to assert all applicable defenses once the precise nature of the relevant circumstances or events is revealed through discovery.

Respectfully submitted,

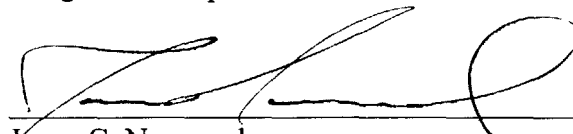
  
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**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the pleading was served on all counsel of record on the Service List on May 28, 2003, via posting to [www.esl3624.com](http://www.esl3624.com) in compliance with the Court's Order Regarding Service of Papers and Notice of Hearings Via Independent Website.

  
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Jason C. Norwood